

LIST OF EXHIBITS

- Exhibit A: Cite - Ex parte Anthony et al.;
- Exhibit B: Alex Bellehumeur's sworn declaration under Rule 132
for U.S. Patent Application 08/303,589;
- Exhibit C: Alex Bellehumeur's sworn declaration filed October 6, 2000 in a re-examination
request;
- Exhibit D: Mr. Dan Kotler's declaration;
- Exhibit E: Mr. Guy W. Haarlammert's deposition;
- Exhibit F: Mr. John R. Nehmens' deposition;
- Exhibit G: Declaration of Mr. Larry King
- Exhibit H: Declaration of Mr. Steven M. Pona

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CONCISE EXPLANATION OF EXHIBITS

- Exhibit A: is a copy of the Ex parte Anthony et al.;
- Exhibit B: Alex Bellehumeur's declaration under Rule 132 which specifically omits any mention that he invented plastic or polymer runners before contacting his co-inventors Mr. Nehmens and Mr. Haarlammer;
- Exhibit C: Alex Bellehumeur's declaration in the re-examination request for U.S. Patent 5,597,161 which he again declares he is the sole inventor of the subject matter which claims a polymer runner or pin;
- Exhibit D: is a sworn declaration of Mr. Dan Kotler, which states Mr. Bellehumeur did not invent the concept of the runners being made of polymer or plastic material with a different coefficient of friction;
- Exhibit E: is a pertinent page of co-inventor, Mr. Guy W. Haarlammer's, deposition which corroborates Exhibit D;
- Exhibit F: are pertinent pages from co-inventor, Mr. John R. Nehmens', deposition which corroborates Exhibit D wherein Mr. Bellehumeur only invented metal runners before seeing them;
- Exhibit G and H: are other declarations that corroborate the question of veracity of Mr. Bellehumeur's claim to inventorship under §102(f).

establishment, to aggregate a large number of "violations," and thereby increase their damages and attorney's fees for essentially the same violation. However, counsel did not even contend that such compounding of violations occurred in this case. Thus, we need not consider whether such action would call for some narrowing of the attorney's fees portion of the statute.

In light of these concessions from the Parks's counsel, we need not, and expressly do not, reach the question of the proper standard to be applied by a trial court in awarding attorney's fees under § 505 of the Copyright Act. While the case might otherwise have presented an appropriate vehicle for an answer to this question, our adversary system of justice forbids us to resolve issues not contested by the parties. Since the Parks have conceded the propriety of this award of attorney's fees if the trial court correctly found a violation, and since we have already determined that the trial court was correct in this regard, we hold that the award of attorney's fees was proper under the circumstances of this case.

Accordingly, we affirm the judgment of the district court in all respects.

Patent and Trademark Office Board of Appeals

Ex parte Anthony, et al.

Appeal No. 503-13

Decided April 28, 1982

Released July 30, 1986

PATENTS

1. Reissue — In general (§58.1)

Deliberate filing of terminal disclaimer to overcome rejection cannot be considered "error" as contemplated by 35 USC 251 that would permit reissuance of patent to cancel or withdraw disclaimer.

Appeal from Art Unit 122.

Application for patent of William C. Anthony and Joseph J. Ursprung, Serial No. 101,536, filed December 10, 1979, for reissue of No. 3,461,461, issued August 12, 1969, based on application, Serial No. 505,993, filed November 1, 1965. From decision rejecting claims 1 through 7, applicants appeal. Affirmed.

Robert A. Armitage, John Kekich and Lawrence T. Welch, all of Kalamazoo, Mich., for applicants.

Before Serota and Milestone, Examiners-in-Chief, and Pellman, Acting Examiner-in-Chief.

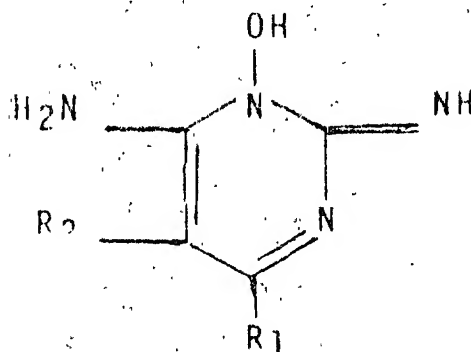
Serota, Examiner-in-Chief.

This appeal was taken from the Examiner's decision finally rejecting claims 1 through 7. Claims 5 and 6 were amended subsequent to the final rejection.

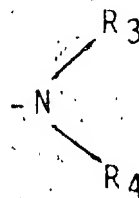
The claims on appeal are directed to certain chemical compounds, which compounds are asserted to be useful as anti-hypertensive agents.

Claim 1 is illustrative and reads as follows:

1. A compound selected from the group consisting of the free base form and acid addition salts of a compound of the formula:



wherein R₁ is a moiety selected from the group consisting of moieties of the formula



wherein R₃ and R₄ are selected from the group consisting of hydrogen, lower alkyl, lower alkenyl, lower aralkyl, and lower cycloalkyl, with the proviso that both R₃ and R₄ are not hydrogen, and the heterocyclic moieties, aziridinyl, azetidiny, pyrrolidinyl, piperidino, hexahydroazepinyl, heptamethylenimino, octamethylenimino, morpholino, and 4-lower-alkylpiperazinyl, each of said heterocyclic moieties having attached as substituents on carbon atoms thereof zero to 3 lower alkyls, inclusive, a nitrogen atom of each of said heterocyclic moieties being the point of attachment of R₁ to the ring in said formula, and wherein R₂ is selected from the group consisting of hydrogen, lower alkyl, lower alkenyl,

lower alkoxyalkyl, lower cycloalkyl, lower[.]aryl, lower aralkyl, lower alkaryl, lower alkaralkyl, lower alkoxyaralkyl, and lower haloaralkyl.

There are no outstanding rejections based upon prior art under 35 USC 102 and/or 103. The only outstanding rejection against the claims is under 35 USC 251. The principal issue raised by the rejection is whether or not the statute provides for the granting of a reissue patent for the sole purpose of, in effect, withdrawing or cancelling a terminal disclaimer filed during the prosecution before the Patent Examiner of the application which resulted in the granting of the patent for which the present application seeks reissue.

A review of the prosecution history of application Serial No. 505,993, the application which resulted in the patent for which the application now before us seeks reissue, reveals that, in the first action on the merits of the application, Paper No. 3, the Examiner rejected the active claims under 35 USC 103 as obvious from Ursprung et al, Patent No. 3,270,014, in view of a number of other patents. In addition, all of the active claims were "rejected on the ground of double patenting over claims 1 and 6 of applicants' copending Serial No. 505,992" filed on November 1, 1965. This latter application issued as Patent No. 3,382,248. It is apparent from the Examiner's discussion of the rejection in the paragraph bridging pages 4 and 5 of Paper No. 3 that the Examiner intended the rejection to be on the judicially created doctrine of "obviousness type" of double patenting. It also appears that the Examiner, in addition to the '992 application, was also relying upon Ursprung Patent No. 3,270,015 to support his "double patenting" rejection.

The applicants in a paper filed October 20, 1967, Paper No. 5, responded to the Examiner's action of September 26, 1967. The response included an extensive traversal of the Examiner's rejections under 35 USC 103. With respect to the double patenting rejection, the response calls the Examiner's attention to the Commissioner's Notice with regard to double patenting published at 834 OG 1615 (Jan. 31, 1967). The Commissioner's Notice is summarized by the applicants as permitting the issuance of two patents provided the "claims do not overlap, even though the subject matter to which the claims on one case are directed may be obvious in view of the subject matter claimed in the other case. *In re Robeson*, 1964 C. D. 561, 141 USPQ 485; *In re Kaye*, 1964 C. D. 630, 141 USPQ 829." (See page 6 of Paper No. 5.) In the penultimate paragraph of Paper No. 5, there is an assertion that the claims of the application do not overlap the claims of the '992 application. There is also a

reference to an interview with the Examiner in charge of the '992 application at which "the potential double patenting problem . . . has been discussed." The applicants continued with the assertion that:

"Every effort is being made by the applicants to prosecute these applications simultaneously, thus striving for a common issue date. In the event a common issue date becomes impracticable at a later date, the filing of a terminal disclaimer in the application last to issue will be considered."

As is evident from this summary of the applicants' first response to the double patenting rejection, there is no traversal of the rejection. The applicants merely indicate that they would try to have both applications issue simultaneously or failing that, they would file a terminal disclaimer, thereby complying with the Commissioner's Notice and the two cited cases.

In the next Office action, Paper No. 6, the examiner maintained his rejections under 35 USC 103 and also maintained his double patenting rejection. The rejections were made final. In their response, Paper No. 7, to the final rejection, the applicants again traversed the rejections under 35 USC 103. Their only comment with regard to the double patenting rejection was as follows:

"Inasmuch as the copending application Serial No. 505,992 has been allowed, a terminal disclaimer is filed concurrently herewith to obviate a double patenting rejection." (Penultimate paragraph of Paper No. 7.)

A terminal disclaimer was indeed filed on March 21, 1968.

Thereafter, an appeal was taken to the Board of Appeals from the final rejection. In the Appeal Brief, the appellants, at page 11, state:

"Inasmuch as there is no overlap between the present claims and those of the aforesaid copending application, a terminal disclaimer has been submitted under the authority of *In re Robeson* . . . and *In re Kaye* . . . so as to expedite prosecution and obviate the rejection. Inasmuch as the double patenting rejection is still maintained, review of the adequacy of submitted terminal disclaimer is requested."

In his Answer, the Examiner stated that the double patenting rejection was not an issue in the appeal since a terminal disclaimer had been filed. In effect, the Examiner did not maintain his double patenting rejection.

The Board of Appeals, in its decision on the appeal did not sustain the Examiner's rejections under 35 USC 103. The Board did not comment on the double patenting rejection since it was no longer an issue in the appeal.

From our review of the prosecution history of the application which issued as the patent for which the present application seeks reissue, it appears that, although the rejections under 35 USC 103 were vigorously contested, the appellants did not on the written record enter any traversal of the Examiner's double patenting rejection. It does not appear that the appellants disputed the Examiner's holding that the subject matter of the claims of that application were obvious from the claims of the '992 application, which application issued as Patent No. 3,382,248. The only action taken to overcome the double patenting rejection was the filing of a terminal disclaimer. No arguments were presented during the prosecution leading to the grant of the '461 patent pointing out why the claims of that patent would not have been obvious from the claims of the '248 patent. Nor was there any indication either in the terminal disclaimer itself or in the simultaneously filed amendment that the terminal disclaimer was being filed "provisionally," contingent on any finding by the Board of Appeals or higher authority with respect to the Examiner's rejections under 35 USC 103.

We will sustain the Examiner's rejection in the reissue application before us.

We do not agree with the appellants that the terminal disclaimer was filed by them because of an error. It is clear from the above summary of the prosecution history of the application which resulted in the patent now, sought to be reissued that the terminal disclaimer was deliberately filed in order to overcome an untraversed obviousness type of double patenting rejection. This procedure for overcoming a double patenting rejection is a judicially approved method. As pointed out above, the appellants never on the record disputed the propriety of the Examiner's holding that the claims of the 505,993 application would have been obvious from the claims of the appellants' '992 application. The appellants never during prosecution of the application presented any reasons why the claims of the '993 application would not have been obvious to the worker of ordinary skill in the art from the claims of the '992 application (now Patent No. 3,382,248). The appellants filed the terminal disclaimer in order to remove the rejection. This was their stated intent. The terminal disclaimer was filed and, as a consequence, the Examiner withdrew his rejection. If the appellants were of the view that the double patenting rejection was legally or factually unsound, they could have presented arguments to that end as they did with respect to the rejections under 35 USC 103 and, if necessary, sought review of the rejections via the appeal procedures. This was not done during the prosecution of the '993 application. It therefore appears that the

appellants acquiesced in the rejection and deliberately filed the terminal disclaimer. Therefore, there does not appear to be any proper basis for a finding that an error of such nature as is permitted to be corrected by reissue has been committed; cf. *Ex parte Lawrence*, 70 USPQ 326 (Bd.App. 1946).

The failure to seek review during the prosecution of the '993 application of the Examiner's "obviousness type" of double patenting rejection, if in fact the appellants did not agree with that rejection, is not such an action (failure to act) as may be remedied via a reissue application. In our view, this is especially true here since there is no evidence on the record that the appellants ever intended to contest the Examiner's obviousness type double patenting rejection. From the record, it would appear that the appellants acquiesced in the rejection. Under these circumstances, we do not believe the filing of a terminal disclaimer constitutes "error" within the meaning of section 251; cf. *In re Mead*, 581 F.2d 251, 198 USPQ 412 (CCPA 1978); and *In re Orita*, 550 F.2d 1277, 193 USPQ 145 (CCPA 1977).

[1] The appellants' arguments to the effect that the reversal by the Board of Appeals of the Examiner's rejections under 35 USC 103 establishes that the Examiner's obviousness type of double patenting rejection was also erroneous and that, therefore, the appellants were in some way induced by the Patent and Trademark Office to erroneously file the terminal disclaimer are unsound. There is no basis for us to now conclude or to speculate what the Board's decision would have been with respect to the obviousness type of double patenting rejection. The Board's departure point for determining the obviousness under 35 USC 103 was different from that of the double patenting rejection. With respect to the latter rejection, the jump-off point was the claims of the '991 application. This '992 application was not considered by the Board for determining whether the claimed subject matter would have been obvious. The Board only held that the combination of references relied upon in support of the section 103 rejection did not render the claimed subject matter obvious. We therefore do not agree that the terminal disclaimer was erroneously filed as a result of error by the Office in rejecting the claims on the grounds of obviousness type of double patenting. As the record now stands, especially since the appellants never during the prosecution of the original patent pointed out any error in the Examiner's holding, the obviousness type of double patenting rejection must be presumed to have been correct. The deliberate filing of the terminal disclaimer to overcome the rejection cannot now be considered as such an error as contemplated by 35 USC 251 to

permit the reissuance of the patent in order to cancel or withdraw the terminal disclaimer.

Under the circumstances here present, the reissue is not to correct mere formal matter. The terminal disclaimer which is now attempted to be nullified was of substantive significance which had a direct bearing in the issuance of the original patent. Nor is the reissue being sought to correct a defect in the specification or drawing or because the patentee is claiming more or less than he had a right to claim in the patent. The purpose of the reissue here, in effect, is to nullify a deliberate action taken in order to remove an outstanding rejection, which rejection, as a consequence of the action taken, was withdrawn.

Nor is the reissue being sought to remove a possible reference that may have been a statutory bar as in the *State of Israel v. Brenner*, 155 USPQ 486 (D.C. Dist. Col. 1967) aff'd, 158 USPQ 584 (D.C. Cir. 1968). Therefore, the State of Israel case is not apposite to the facts of this case.

We are also of the view that the reissue application is not here proper since, in effect, the granting of the reissue would enlarge the scope of the claims of the original patent. The claims would be able to be sued upon for a longer period than would the claims of the original patent. Therefore, the vertical scope, as opposed to the horizontal scope (where the subject matter is enlarged), would be enlarged. Since this application was filed more than two years from the grant of the original patent, the reissue is barred by section 251.

We also note that the appellants' oath does not set forth the circumstances surrounding the discovery of the error or why the long delay, over ten years, in seeking the reissue.

Accordingly, for the reasons given in the Examiner's Answers and those emphasized above, we will affirm the Examiner's decision.

AFFIRMED

Commissioner of Patents and Trademarks

In re Athridge

Decided July 2, 1986

PATENTS

1. Attorneys — Admission to practice and disbarment (§17.3)

37 CFR 10.6(d), which provides that government employees who are disqualified by statute from practicing as attorney in proceedings before government agencies may not be

registered to practice before Patent and Trademark Office, is not unconstitutional as applied to government employee who was denied registration only until statutory disqualification from practice before PTO was removed, and requirement that petitioner repeat admission examination to gain admission to register is reasonable, in view of need to ensure that PTO practitioners be familiar with current rules and procedures for practice.

Request for registration to practice before PTO with inactive designation. Request denied.

Thomas P. Athridge, Jr., Bethesda, Md., pro se, for requestor.

Peterson, Deputy Commissioner.

Thomas P. Athridge, Jr., an attorney presently employed by the Federal Trade Commission has petitioned the Commissioner under 37 CFR 10.2(c)(1985) to have his name placed upon the register of attorneys and agents entitled to practice before the Patent and Trademark Office (PTO). He has requested registration with an "inactive" designation until such time as he terminates his federal employment.

Mr. Athridge applied for registration to practice before the PTO on September 14, 1983. His application was accepted February 28, 1984 and he took the examination for registration held April 10, 1984. On June 22, 1984, he was notified that he had passed the examination but under 18 U.S.C. 203, 205 and 37 CFR 1.341(f)(1983) was disqualified from practicing before the PTO and would not be registered. He was further advised that he would be registered if he filed a satisfactory showing within one year of the date of the letter that his status had changed and he was no longer disqualified under 37 CFR 1.341(f)(1983) [currently Rule 10.6(d)(1985)].¹ Mr. Athridge was further advised that he could not thereafter become registered except upon taking and passing another examination. At the expiration of the one year time period, Mr. Athridge requested and received an extension of time until December 31, 1985 to remove the disqualification. However, he was advised that no further extensions

¹ On March 8, 1985 sections 1.341 to 1.348 of 37 CFR were removed from the Code of Federal Regulations. Sections 10.5 to 10.170 were promulgated in their place. See 50 Fed. Reg. 5158, 5171, 5172-5187 (Feb. 6, 1985).

Part # 23

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of
ALEX R. BELLEHUMEUR
For: File Wrapper Continuation of
PUCK FOR USE ON NON-ICE SURFACE
Serial No. 08/303,589
Filed: 9/9/94

) PATENT
) Group Art Unit: 3304
) Examiner: Raleigh W. Chiu
)
)
) January 11, 1996

Honorable Commissioner of Patents and Trademarks
Washington, D.C. 20231

Dear Sir:

DECLARATION UNDER 37 C.F.R. 1.132

Alex R. Bellehumeur declares as follows:

1. I am the inventor of the subject matter of the above-identified patent application.
2. During the first half of 1992 I was one of a group interested in forming a professional sports league for the sport of roller hockey. At that time pucks for use on a non-ice surface were made from a polymer and such polymeric pucks were either hollow or solid and had no runners. As a result, these pucks were too slow to make the game entertaining. It required that the players skate at a slow speed and the game lacked the excitement of ice hockey. I therefore began working on a puck which would speed up the

game. I filed a patent application which matured into U.S. Patent No. 5,275,410. this patent names me as an inventor with two co-inventors.

3. As of June 1, 1992, I had devised the puck shown in the sketch identified as Exhibit "I" attached hereto. This puck as shown by the drawing in the lower right hand corner had unitary runners which were fabricated from a different material than the body of the puck and had heads which extended from the unitary runner above and below the upper and lower surfaces of the puck.

4. Next I needed to produce a prototype and it was only at this time after my invention of the unitary runners that I contacted the co-inventors, namely, John R. Nehmens, II, and Guy W. Haarlammert.

5. Thus, the concept of a unitary runner made of a material have a lower coefficient of friction than the puck was entirely my idea, not the idea of my co-inventors of the parent application which has matured into U.S. Patent No. 5,275,410.

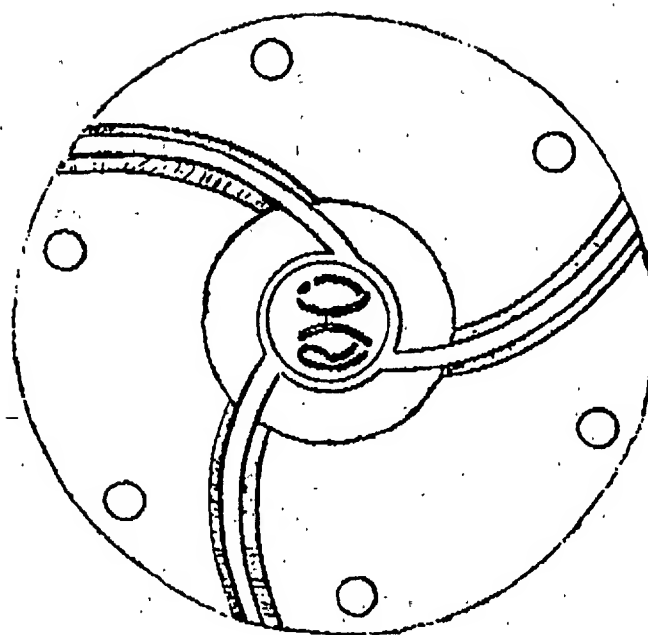
6. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements were made with the knowledge that wilful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such wilful, false statements may jeopardize the validity of the above-referenced application or any patent issuing thereon.

Date: Jan. 23rd, 1996.


Alex R. Bellehumeur

ROLLER HOCKEY**IN LINE ROLLER HOCKEY PUCK**

INVENTION BY ALEX R. BELLEHUMEUR JUNE 1, 1992



TYPICAL RUNNER

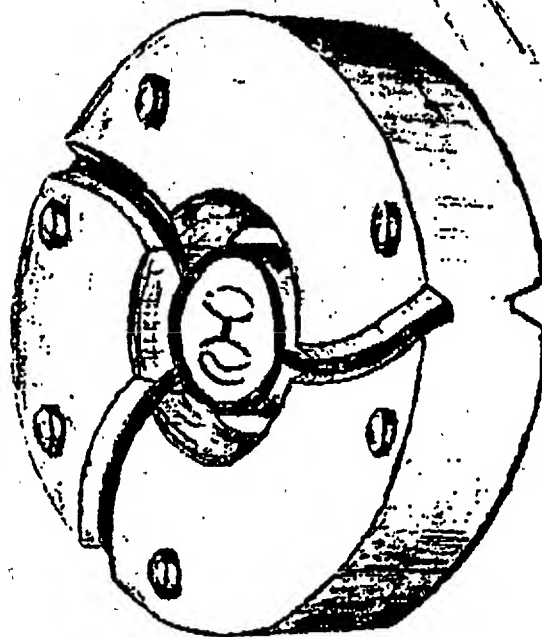
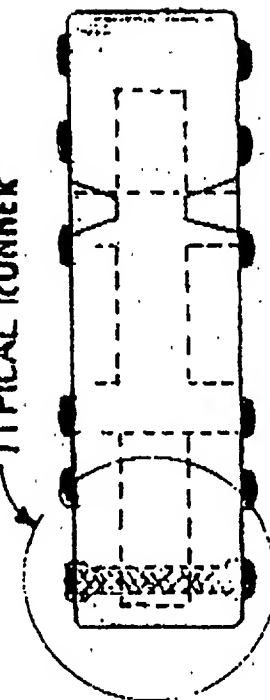


Exhibit "I"

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Registration of)
ALEX R. BELLEHUMEUR)
For: PUCK FOR USE ON A NON-ICE SURFACE)
Registration No. 5,597,161)
Issued: 1/28/97) October 6, 2000

Honorable Commissioner of Patents and Trademarks
Washington, D.C. 20231

Dear Sir:

DECLARATION OF ALEX R. BELLEHUMEUR

I, Alex R. Bellehumeur declares as follows:

That I am the inventor of the claimed invention of U.S. Patent No. 5,597,161. The puck has had commercial success in that close to two million of my pucks have been sold to date. It is my belief that the use of runners having a low coefficient of friction about the periphery of a polymeric puck permitted professional roller hockey to be played

My U.S. Patent No. 5,597,161 has also been widely recognized in the inline puck industry and I have licensed the patent to two manufacturers. These manufacturers have sold an estimated 2,000,000 to date.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that

these statements were made with the knowledge that wilful, false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such wilful, false statements may jeopardize the validity of the above-referenced application or any patent issuing thereon.

Date: 10/6, 2000.


Alex R. Bellehumeur

2000-10-06 10:00:00

SULZNER & ASSOCIATES

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Emma L. Forrest, S.B. #206985
Attorney for Defendant TSUNAMI HOCKEY

COPY

U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

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FILED

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ALEX BELLEHUMEUR

Plaintiff,

v.

TSUNAMI HOCKEY, LLC

Defendant

CASE NO. CV-01-00890 RSWL (BQRx)

DECLARATION OF DAN KOTLER IN
SUPPORT OF REPLY TO PLAINTIFF'S
OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT BY TSUNAMI
HOCKEY, LLC

Motion Date: March 11, 2002
Time: 9:00 a.m.
Judge: Hon. Ronald S.W. Lew
Ctrm: 21
Magistrate: Hon. Brian Q. Robbins

I, DAN KOTLER, declare and state as follows:

1. I am the former principal owner of a company named Sport Court, which, among other things, manufactures specialized flooring systems for sports. Sport Court has one principal office, located in Salt Lake City, Utah. [Attached hereto as Exhibit A is the web page for Sport Court that provides an overview of the company.]

2. In mid 1992, during the last stages of formation of the Roller Hockey International partnership, Sport Court was invited to become a small limited partner. Sport Court officially "signed on" as a partner at a meeting held in the offices of Statewide Developers. Also present at that meeting were Dennis Murphy; Larry King; my employee, Dan Wollman; and I believe Bill Schoen and Anno Willison. Alex Bellehumeur did not attend that meeting.

1 3. After Sport Court signed on as a partner, Dennis Murphy showed me a prototype
2 of a puck that he said his son-in-law, Guy Haarlammert, and Alex Bellehumeur had been working
3 on for some time. The puck body was made out of a plastic material, but it had metal runners
4 around the periphery. I asked what they were planning to pay to have the puck manufactured and
5 Dennis Murphy replied, "That's the problem. The best we can get it made for is about \$3.00."
6 I informed Dennis that, with a few changes, I could make the puck for less than "a buck," or
7 \$1.00. Dennis seemed excited over that news and asked, "You gotta be kidding?" I told him that
8 we had to get rid of the metal runners, then I could guarantee that I could make the puck for less
9 than a dollar. Dennis Murphy asked if I would proceed as quickly as possible.

10 4. My employee, Dan Wollman, and I returned to Salt Lake City later that same day and
11 we brought one of the prototype pucks with us. The next day, I called a meeting with my plastics
12 management staff and told them about my commitment to RHI to develop a puck for less than one
13 dollar per puck in manufacturing costs. Although my company was backed up in production, I
14 ordered my staff to give RHI's puck development top priority.

15 5. My staff began to make suggested design changes to Alex Bellehumeur, such as the
16 spoke design, the materials that should be used for the puck body, the runner design and the
17 materials that should be used for the runners, etc. My staff spent literally hundreds of hours on
18 the telephone with Alex Bellehumeur to relate their ideas and to inform him about the changes that
19 were being made.

20 6. Sport Court proceeded to build the new molds, at Sport Court's expense. Sport Court
21 agreed to recover the manufacturing costs, without interest, at 3¢ per puck. We calculated our
22 costs as closely as possible and allowed for a modest margin. We ultimately agreed to make the
23 puck for 90¢, which included the 3¢ mold cost amortization. Since I did not want to disturb my
24 primary business with the hockey puck production, I contributed my own personal funds to the
25 puck project. I memorialized the start-up costs for the puck project, including my out-of-pocket
26 expenses, in an April 8, 1993 letter to Larry King, who was the Chief Executive Office of RHI.
27 [A true and correct copy of this April 8, 1993 correspondence is attached hereto as **Exhibit B.**]

1 7. Sport Court began production of the puck and sold it to RHI for 90¢ per unit. I
2 became disillusioned, however, when RHI expected me to buy the puck back as a "Team Owner"
3 for \$4.50 per puck wholesale. Although I believed this arrangement was grossly unfair, I went
4 along with it, because I assumed that the money went to RHI and that RHI would take 20% and
5 the teams would split 80% of the profit. My assumption, however, was incorrect. When I
6 received my first check as a team owner from "puck revenue," there were no details included with
7 the check to explain from where the money was coming or how it was being distributed. As a
8 result, I requested accounting details.

9 8. The "accounting" that I received was actually hand-written scribble. Those records,
10 however, revealed that the following disbursements were taking place:

Puck Production Cost	90¢
Puck Sale Revenue being Disbursed to RHI and Teams	11¢ (4¢ to RHI partners and 7¢ to team owners)
TOTAL DISBURSEMENTS	\$1.01

16 As indicated, the wholesale price of the puck was \$4.50 and the retail price was even
17 higher. If the total profit being disbursed from the sale of the puck was only \$1.01, where was the
18 rest of the money going? I was so angry that I related these details to all RHI Team Owners and
19 RHI partners in an October 1994 letter, which included my calculations regarding the questionable
20 accounting for puck sales. [A true and correct copy of this October 1994 letter, along with my
21 accounting calculations, is attached hereto as **Exhibit C.**]

22 According to my calculations, which were based on RHI's handwritten "records," it was
23 clear that, out of the \$263,702.59 in puck revenue, \$64,056.00 was distributed back to Sport Court
24 to cover the manufacturing costs, and only \$29,710.08 was actually being distributed to the RHI
25 team owners and partners. In other words, there was **\$169,936.00** in revenue that was totally
26 unaccounted for. According to my calculations, if one considered the previous puck distributions
27 that were made, over **\$300,000** in profit was going into some unknown individual's pocket.

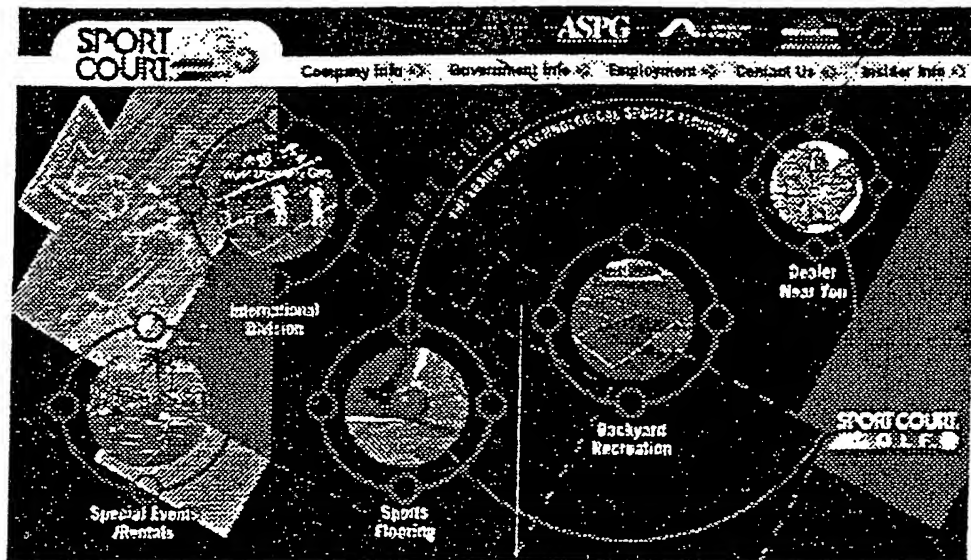
1 ["Karhu," incidentally, purchased the right to distribute the puck.] Based upon my findings, I
2 informed the RHI partners and team owners that I thought the deal was immoral, if not illegal, and
3 I did not want to be a part of it any longer. I refused to continue manufacturing the puck and Alex
4 Bellehumeur provided me an address to which I should send the production molds. I shipped off
5 the molds, as instructed, and Alex Bellehumeur took the manufacturing contract to some other
6 company.

7 9. Based upon my intimate knowledge of the puck design, it is my opinion that Alex
8 Bellehumeur did not invent the puck that is the subject of the '410 patent. He was simply a
9 "contact person" at RHI regarding our design of the roller hockey puck.

10 I declare under penalty of perjury under the laws of the United States that the foregoing is
11 true and correct and was executed by me on this 1 day of ^{March} ~~February~~ 2002, at San Diego,
12 California.

13 
14 _____
15 DAN KOTLER
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EXHIBIT "A"



10057671.000000

**SPORT
COURT**

COMPANY

INFORMATION

[ABOUT](#) [RECREATION](#) [FLOORING](#) [GOLF](#) [EVENTS](#) [RETAIL](#) [CONTACT](#) [DEALERS](#) [INFO](#) [HOME](#)

HISTORY

Who: During the 1960's, long before the fitness boom, Sport Court Inc. founder Dan Kotler started development of a family recreation court concept that would fit American's backyards.

When: In 1974, Sport Court was incorporated to address the demand for the new backyard sensation, the SPORT COURT® game court.

What: Sports are our passion and making quality sports products is our business. Not only do we provide families with the backyard of their dreams, but our innovative sports surfaces are the premiere flooring played on by a wide variety of sports, schools and athletic centers.

Where: Home to Sport Court Inc. is a 90,000 square foot production plant in Salt Lake City, Utah.

Why: As sport enthusiasts ourselves, we at Sport Court are the first to demand top quality in our products. We would not offer a products that we, ourselves do not endorse.

QUICK FACTS

- Over 50,000 installations world-wide
- Plant produces product 24 hours-a-day, 7 days-a-week
- Found in the backyard of over 50 NBA players
- Used by the International Basketball Federation, NCAA, USA Volleyball Association, USA Hockey In-line and Roller Hockey International

MISSION STATEMENT

To be the leading provider of high quality residential back yard game court products, and high performance residential and institutional flooring surfaces

PRESS RELEASES

- [New Volleyball League Drawing Crowds, Feb. 18, 2002](#)
- [Portafloor® is Olympic Choice in 2002, Feb. 6, 2002](#)
- [Breakthrough Technology in Synthetic Sports Flooring, Jan. 29, 2002](#)
- [NBA All Star Jam Session to Use Sport Court Flooring, Jan.](#)

25, 2002

- NHL All Star FANTasy Event to Use Sport Court Flooring,
Jan. 25, 2002
- Las Vegas Annual Convention, Jan. 11, 2002
- USPV Renews Sponsorship Agreement with Sport Court,
Dec. 27, 2001



**SPORT
COURT**

1-800-431-6112 For More Information
932 SOUTH 700 WEST SALT LAKE CITY UTAH 84104
info@sportcourt.com



ASPG



What The World Plays On™

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EXHIBIT "B"

Sport Court, Inc.
1075 South 700 West • Salt Lake City, Utah 84104
Telephone (801) 972-0260 • Fax (801) 976-7752

Larry King
Chief Executive Officer
Roller Hockey International
13070 Fawn Hill Drive
Grass Valley, CA 95945

Copy
for Alex B.

Although my primary business is doing very well, we have made some dramatic financial commitments prior to my hockey involvement (we just purchased another half million dollar molding machine and auxiliary equipment).

Since I had previous commitments to take me out of the country, I'm a little behind schedule on my hockey program but will focus on it from here on out.

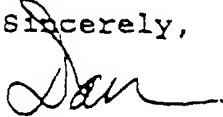
1. I have invested a huge amount of money in getting the puck to the production stage and we are ready to get started on the production run. I suggest that R.H.I. simply deduct \$56,000 from the production invoice and transfer the money to the payroll account in lieu of the "Letter of Credit."

1,740 check attached

This will put the Salt Lake Territory agreement current and we will keep it that way.

It was agreed between the principals of R.H.I. and myself that the \$55,000 entrance fee was waived for previous considerations.

Sincerely,



Dan Kotler
President

DK/ks

C.C. Alex Bellchumee - R.H.I.

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EXHIBIT “C”

October - 1994

DK
memo + I

I
Gave them to Larry
King at
meeting

TO ALL RHI TEAM OWNERS AND RHI PARTNERS

We've all recently received a distribution of puck revenues along with a note from Alex in which he states once again that he's now getting the puck made cheaper than when Sport Court was manufacturing it.

Yes, its true, my company was making a profit on the puck once the kinks were worked out. (*Please read the attached historical summary on the puck before*

continuing) Now, why in the hell would I give up making a profit?

I did it because I thought the deal stunk and I wouldn't continue to be a part of it.

Frankly, I'm still upset that the situation that caused me to give up manufacturing the puck still exists, we're being short changed.

Some of the partners, evidently thought it wasn't fair either and the deal was restructured so that the teams got more and the partnership less. But, the fact remains, most of the money is going somewhere else. Where?

Let's Look At The Facts

- ◆ I was making the puck for \$.90
- ◆ I now understand its down to about \$.60

Number of pucks sold per Alex's latest distribution summary.

Inv. #	103	21,707 pucks	38,000 runner sets
Inv. #	104	33,476	0
Inv. #	105	Missing	0
Inv. #	106	10,080	50,000 runner sets
Inv. #	107	20,244	0
Inv. #	108	<u>21,254</u>	<u>0</u>
		106,761 pucks	88,000 runner sets

@	\$.60	-----	Cost
	\$	64,056.00	-----	Total Cost

Now based on the distribution sheet

	<u>Revenue from Karhu</u>	<u>Distributed to Teams & Partners</u>
Inv. # 1003	60,458.33	3,956.37
Inv. # 1004	73,312.44	4,870.76
Inv. # 1005	Missing	
Inv. # 1006	39,075.20	2,516.44
Inv. # 1007	44,322.36	8,984.81
Inv. # 1008	<u>46,534.26</u>	<u>9,381.70</u>
Totals	263,702.59	29,710.08

Gross Revenue From Karhu	263,702.59	
To Partners and Teams	- 29,710.08	
To Manufacturer	<u>- 64,056.00</u>	
Balance	\$169,936.00	This amount is unaccounted for

Multiply this by the previous distributions and its well over \$300,000 going into the pockets of others.

THE UNIVERSITY OF CHICAGO
CHICAGO, ILLINOIS

3

Prepared in Oct 1994

The RHI Puck

A Historical Review prepared by Dan Kotler

Almost three years ago, during the last stages of formation of the RHI partnership, Sport Court was invited to become a small limited partner.

- (a) At the meeting in the offices of Statewide Developers when we signed on, were Dennis Murphy, Larry King, Dan Wollman, myself, and I believe Bill Schoen and Anno Willison. Alex was not in attendance.
- (b) After we signed on, Dennis showed me a prototype puck that he said his son-in-law and Alex had been working on for sometime.
- (c) I asked what they were planning to pay to have it manufactured. Dennis said, "that's the problem, the best we can get it made for is about \$3.00".
- (d) My statement on the spot was, "With a few changes, I can make that puck for less than a buck (\$1.00)". Dennis's excited comment was "You gotta be kidding?" My response was, "We need to get rid of those metal runners, and I guarantee we'll make it for less than a dollar".
- (e) Although Alex was not present, Dennis asked if I would proceed as quickly as possible.

DEVELOPMENT

When Dan Wollman and I returned to Salt Lake City later the same day, we brought one of the prototypes with us. The next day I called a meeting of my plastics management staff and told them of my commitment to RHI, a puck for less than a Buck. Although we were backed up in production, I ordered my staff to give the puck priority.

- (a) My staff then began to make suggested changes to Alex. ie: Spoke design, materials for the puck body, runner design and materials. Phone records will substantiate the hundreds of calls/hours my staff spent on the phone with Alex.
- (b) Sport Court proceeded to build the new molds at Sport Courts expense and agreed to recover the cost without interest at .03¢ per puck.
- (c) We calculated our cost as close as possible, allowed for modest margin and agreed to make the puck for 90¢ which included the .3¢ mold cost amortization.

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I swallowed hard but went along because I assumed that the money went to RHI and that RHI would take 20% and the teams would split 80%.

- (a) When I received my first check as a team owner on "Puck revenue" there were no details with the check so I requested accounting details.
- (b) The hand scribbled accounting arrived and I went ballistic. (.11¢ of puck revenues was allocated for disbursement. 20% = .04¢ to RHI Partners and 80% = .07¢ to be shared by the team owners.
- (c) Summary - .90¢ for the puck
.11¢ to RHI and Teams

\$1.01

At this point I demanded to know where the hell the rest of the money was going. When I found out, I decided that I would no longer manufacture the puck for RHI even though we were making a profit doing so.

ORIGINAL

Edwina L. Gonzales & Associates

CERTIFIED SHORTHAND REPORTERS

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ALEX BELLEHUMEUR, an individual,) CASE NO. CV 01 00890
Plaintiff,) [RWSL]
v.) [BQRx]
TSUNAMI HOCKEY, LLC.,)
Defendant.)

DEPOSITION OF GUY W. HAARLAMMERT

SAN DIEGO, CALIFORNIA

March 7, 2002

REPORTED BY: EDWINA GONZALES

CERTIFIED SHORTHAND REPORTER - NO. 11978

CERTIFIED
COPY

Edwina L. Gonzales & Associates

CERTIFIED SHORTHAND REPORTERS

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ALEX BELLEHUMEUR, an individual,

Plaintiff,

v.

TSUNAMI HOCKEY, LLC.,

Defendant.

CASE NO. CV 01 00890

[RWSL]

[BQRx]

DEPOSITION OF JOHN R. NEHMENS, II

VOLUME I

PAGES 1 THROUGH 204

RIVERSIDE, CALIFORNIA

APRIL 22, 2002

REPORTED BY: EDWINA GONZALES

CERTIFIED SHORTHAND REPORTER - NO. 11978

1 We manufactured one. We went down and played
2 with it, and we went back and manufactured another one.
3 We were going back and forth until we got to the
4 Glendora trial.

5 Q. My question was actually much more specific
6 than that.

7 Had you and Guy already come up with a
8 prototype between the time that you initially met with
9 Anno Willison and the next time that you had a meeting
10 with Mr. Bellehumeur?

11 A. If you mean the first time that we met with
12 Mr. Bellehumeur after Anno, no. We had no action until
13 we met with Mr. Bellehumeur for the first time.

14 Q. When was the first prototype developed?

15 A. The first prototype was developed, to the
16 best I can recollect, towards the end of May.

17 Q. Are you telling me that you initially met
18 with Anno Willison, he showed you the role of electrical
19 tape, he generally provided you with some background
20 information about the project, and then you met with
21 Mr. Bellehumeur and he provided you the drawings that
22 are depicted in Exhibits 4A and 4B?

23 A. No.

24 What we did was is we met with Anno, then we
25 met with Mr. Bellehumeur. After we had an understanding

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1 of what was expected from us and the project size based
2 on tooling and everything, we went ahead and the three
3 us collectively decided that we would start making an
4 initial puck so we could see what we were going to end
5 up with.

6 At that point in time, we went back to our
7 toolmaker and gave him an idea of what we wanted to
8 accomplish with heights and diameter, which was
9 basically taken after, as I remember, this regular
10 hockey puck but thinner. We then came up with the first
11 few molds. These drawings surfaced in June when we
12 developed the rollover problem.

13 Q. So --

14 A. There was no drawings prior to these drawings
15 that I remember.

16 Q. By these drawings, you're referring to
17 Exhibit 4A and 4B?

18 A. Yes.

19 Q. Who did you use for the molding process?

20 A. A company called Hartman Enterprises in
21 La Verne, California.

22 Q. Were you familiar with that business before
23 this puck project?

24 A. Yes, I was.

25 Q. How were you familiar with that company?

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1 A. The company is owned by Virgil Hartman.
2 Virgil's son and daughter are both professional drag
3 racers, and Virgil lived behind me when I lived in San
4 Dimas the first time.

5 Q. So, basically, Hartman Enterprises was a
6 plastics company?

7 A. He was an injection mold tooling company.

8 Q. Is Virgil still alive?

9 A. Yes, he is.

10 Q. Do you know where he is located?

11 A. South Carolina. Spartanburg, South Carolina.

12 Q. S-p-a-r --

13 A. T-a-n-b-u-r-g.

14 Q. Did you have occasion to use Hartman
15 Enterprises in other areas of your business?

16 A. Actually, we had one other project with
17 Virgil's company. Part of his company was a racing
18 company. We manufactured a clutch that he was in the
19 process of working on for his race cars. But as far as
20 plastic injection, this is the only time we ever dealt
21 with him.

22 Q. Other than the clutch, you say you didn't
23 have Mr. Hartman develop anything else?

24 A. No, I didn't.

25 Q. Did you have any involvement in build design

1 or anything like that?

2 A. No, I didn't.

3 Q. So, the first prototype was finished in about
4 June of '92, you say?

5 A. The first prototype was probably finished by
6 the end of May.

7 Q. Was it one mold or two?

8 A. We were working a single cavity mold -- from
9 my recollection based on costing, we probably worked
10 that mold at least three or four times before we had to
11 change it.

12 Q. Did that first prototype have any sort of
13 runner system?

14 A. No, it didn't.

15 Q. What was the chemical makeup of the body of
16 the puck?

17 A. I think it was polymer pellets.

18 Q. So, would you buy materials in pellet form
19 and then Mr. Hartman at his shop would melt them down
20 and inject the mold?

21 A. Yes. There were pellets that were put in his
22 machine, heated down, and injected.

23 Q. Who actually created the mold to be used?

24 A. Created the mold?

25 Q. Yes.

1 A. Mr. Hartman machined the mold based on just
2 sitting down and sketching out the concept of what we
3 wanted to do.

4 Q. So, did you and Guy actually draw what you
5 wanted the mold to look like and then provided it to
6 Mr. Hartman?

7 A. We sketched out for him what we wanted it to
8 look like. He played with radiuses and whatever for the
9 different areas of the mold based on if the tool would
10 allow proper flow of the plastic into the mold and what
11 it wouldn't. So, he fine tuned it as far as inside
12 radiuses, outside radiuses to get the plastic flow.

13 Q. Was it a solid body?

14 A. It was a solid body.

15 Q. Who was the company that supplied the polymer
16 pellets?

17 A. I don't recall. I know they're in Chino.
18 They are a large plastic supply house in Chino.

19 Q. Was that a subcontractor who you hired or
20 Hartman Enterprises hired?

21 A. It was the subcontractor that Hartman used
22 all the time which made it a lot easier to get the
23 development because they would sample out a lot of the
24 products.

25 Q. Do you have any drawings of those machine

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1 chronological order. It might be the easiest way to go.

2 Just so you have something back in your file,
3 John, the invoices that are in carbon copy form, I'll
4 keep the top sheet, and I'll hand you back the copies
5 where appropriate so the record is clear.

6 Invoice No. 100025 I'm keeping the copy of
7 that. I'm marking as Exhibit 4C an invoice dated
8 June 8th, 1992. I see it was assigned an RHI number in
9 the top right-hand corner.

10 (Defendant's Exhibit 4C marked.)

11 BY MS. FORREST:

12 Q. Do you see that, John, on Exhibit 4C?

13 A. Yes, I do.

14 That was our internal system at Air Frame
15 Manufacturing, so we could keep track of purchase orders
16 for this project versus purchase orders for our radar
17 machine business.

18 Q. I see it says No. RHI-0872-04. Was 0872 the
19 client number that you assigned RHI, if you recall?

20 A. I don't know where that number came from,
21 honestly.

22 Q. Do you know what the "04" indicates in that
23 number?

24 A. It could have been either the fourth purchase
25 order that we gave them. I really don't remember the

1 numbering system at all.

2 Q. Are you finding anything that exists before
3 this invoice dated June 8, 1992?

4 A. No, you have all the invoices I have.

5 MS. FORREST: So, we marked as 4C, for the
6 record, an invoice dated June 8th, 1992.

7 We'll mark as Exhibit 4D an invoice dated
8 July 15th, 1992, Invoice No. 100025.

9 (Defendant's Exhibit 4D marked.)

10 BY MS. FORREST:

11 Q. When you paid Mr. Hartman, did you pay with
12 an Air Frame Manufacturing Company check?

13 A. Yes, I did.

14 Q. Did Mr. Hartman come up with any ideas on how
15 the design should be changed for the puck?

16 A. The only input that Mr. Hartman had was to
17 create dimensions. In fact, I think he did put an
18 eighth-inch radius on the outside dimension or inside
19 dimension. We were having trouble getting the plastic
20 to flow through the whole tool before -- the first part
21 of the injection was cooling off before the rest of it
22 was cooling -- before the rest of it could get injected,
23 so he came up with tooling design recommendations to get
24 the tool to flow properly. But as far as the actual
25 overall dimensions or size, shape of the puck, there was

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1 no input from his end.

2 Q. Now, you say that the initial puck prototype
3 was a solid body puck with no runners. About what
4 period of time did the runners get added to the design?

5 A. Best of my recollection, it was at the end of
6 June.

7 Q. Whose idea was it to add runners?

8 A. It was idea when we were at Mr. Bellehumeur's
9 office and we were having this roll-up problem, where
10 this thing would just roll completely across the rink.
11 We were trying to figure out how to do it. That is when
12 the drawings generated from Alex had had the runner
13 system.

14 Q. That's when Alex provided you the drawings,
15 at least?

16 A. Yes.

17 Q. Now, were the runners included in the same
18 injection mold, or was there a two-step process?

19 A. Actually, the initial runners that we tried
20 had nothing to do with injection molding or plastic at
21 all.

22 We tried first with -- we used stainless
23 steel spanners. We used brass spanners. We used brass
24 standoffs. We used pan-headed screws. We tried a
25 number of things to get the puck to smoothly roll across

1 the surface without degrading the heads which was one of
2 our major problems was it would wear out on the asphalt
3 quickly.

4 The other concern we had was to find
5 something that installed in the puck and be able to stay
6 in the puck when it was hit with the force of a stick or
7 hit a wall or bounced off concrete. We went through
8 probably seven or eight different types initially of
9 what we were calling runners.

10 Q. Did you play with the number of runners or
11 their placement on the puck?

12 A. I think we started -- at some point in time
13 we had up to six runners down to three runners.

14 Q. You first tried six runners; is that correct?

15 A. I can't tell you the order they were in. We
16 did have six in the early stages.

17 Q. Did you ever try titanium runners?

18 A. There was a spanner -- there was a spanner
19 standoff that we tried -- special spanner that we
20 brought, but to my recollection, I don't know if it was
21 titanium or not. I don't think it was titanium.

22 Q. When you were playing with these different
23 materials, what end result did you have in mind to
24 achieve?

25 A. What we were hoping to achieve was to keep --

1 allow the puck to maintain a speed as close to an ice
2 hockey puck as we could. To get the puck to flow across
3 the surface smoothly without bouncing or bobbling, to
4 get the puck to fly straight when it was hit, and to
5 keep it from rolling up on its edge in rolling instead
6 of sliding across the surface.

7 Q. Did you write any of the specifications that
8 are included in the 410 'Patent?

9 A. I wrote nothing of the text in the 410
10 'Patent.

11 Q. For lack of a better word, did you keep a lab
12 notebook of your trial and error attempts to create a
13 puck?

14 A. No, we didn't.

15 Q. Did you maintain notes in any fashion on your
16 trial and errors as you used different materials for the
17 puck development?

18 A. Nothing formal. No, I didn't.

19 Q. Was there anything informal kept?

20 A. Nothing more than -- we would go out and test
21 it and we would come back and we would generate another
22 requirement back to my tooling guy. We started going on
23 with the process. We didn't document on such and such a
24 date that we did this design change. It was fast
25 moving. We were doing this along with running a

1 business. So, in essence, we were testing it after
2 hours. We would come back the next morning. When I had
3 a chance, I would go see Mr. Hartman and say, "This is
4 what we want to change," and he would change it.

5 Q. What kind of degree, if anything, does
6 Mr. Hartman have?

7 A. None that I know of. I assume you're asking
8 about a degree in engineering or whatever?

9 Q. Whatever.

10 A. No, he has no degree that I know of. That is
11 the company that the plastic came from.

12 Q. It's Polymerand?

13 A. No, it's Polymerland. It's l-a-n-d. It's
14 cut off.

15 Q. P-o-l-y-m-e-r-l-a-n-d.

16 What is coefficient of friction?

17 A. You want the equation, the terminology of it?

18 Q. I just want your understanding of what
19 coefficient of friction is?

20 A. My non-educated description of what that
21 would be is the elements of how one surface travels over
22 the surface and how much force it takes to overcome that
23 friction. I have no idea. Other than that, that's the
24 best of my recollection of what that is.

25 Q. By playing with different runner-type

1 materials, was it not your purpose in trying to
2 determine what material would have the best coefficient
3 of friction?

4 A. It's my understanding of what that definition
5 is. Yes, it is.

6 Q. Is it your understanding that in general,
7 metal type of alloys have a lower coefficient of
8 friction than say a plastic polymer?

9 A. As turned out, it appeared that the polymer
10 had a much better -- enhanced the lack of friction
11 better than the steel did.

12 Q. Was anyone assessing the coefficient of
13 friction for the materials that you were using for the
14 runners?

15 A. If we are talking technically, no. We didn't
16 have it down to that technical degree. We strictly
17 looked for items, put them in, and tested them on the
18 ground. We didn't have anybody engineering coefficients
19 or any of those issues.

20 Q. Who was making the decision as to what type
21 of runner material to try next?

22 A. Some of them was Guy and I. We would go and
23 try to determine whatever kind of materials we could,
24 but there was different head shapes, different fastening
25 systems that we could find. We met with

1 Mr. Bellehumeur. We talked about ideas he had. It was
2 just a matter of trial and error until we came up with
3 what we thought was the best system.

4 Q. Whose idea was it to have an open area in the
5 puck so it would deflect upon impact?

6 A. To my recollection, that was mostly
7 Mr. Bellehumeur's idea.

8 Q. How do you know it was his idea?

9 MR. DONAHUE: Objection. Argumentative. You
10 asked the question, he answered it.

11 MS. FORREST: I'm just asking how he knows
12 that it was actually Mr. Bellehumeur's idea.

13 THE WITNESS: To rephrase my answer, when we
14 had a discussion in Mr. Bellehumeur's office at some
15 point in time, he had suggested that we create a pocket
16 or a void between the outer wheel and the inner wheel.
17 Whether it was Mr. Bellehumeur's idea or not, I have no
18 idea.

19 BY MS. FORREST:

20 Q. Now, are you trying to achieve or find a
21 product for the runners that have a lower coefficient of
22 friction with the surface on which it's being slid or
23 with the puck itself?

24 A. Everything was geared towards the surface
25 that the puck was going to be used on.

1 Q. If a specification said that it would have a
2 lower coefficient of friction than the puck, would that
3 be a misprint?

4 A. If what specification?

5 Q. If a specification in the patent said that
6 the result was to achieve a lower coefficient of
7 friction than the puck body, is that a misprint in your
8 mind?

9 A. In my mind, the purpose of the runner was to
10 allow the puck assembly to travel across the surface as
11 smoothly and slickly as possible.

12 Not understanding completely coefficient of
13 friction, I'm not sure how to answer your question. The
14 outcome of the runner was to give it the slickest
15 movement across the surface. Whether that is reducing
16 it more than the puck body, I don't have an answer.

17 Q. What was the approximate diameter of the
18 first prototype that you designed?

19 A. The approximate diameter of the puck was a
20 little less than four inches -- maybe four inches.

21 Q. Do you know what the standard ice-hockey puck
22 dimensions are?

23 A. No, I'm sure I knew 10 years ago, but I don't
24 remember.

25 Q. Do you know approximately the thickness of

1 the first prototype you invented or developed?

2 A. The first thickness was an inch -- a little
3 less than an inch.

4 Q. Would you mind just taking a moment. I
5 handed you back the carbon copies of the invoices that
6 appeared to be duplicates -- the top sheet.

7 Would you mind looking through your folder
8 and seeing for sure if you have any drawings, notes,
9 anything related to the mold that was developed for the
10 puck?

11 A. That's the only one I have. That was
12 somewhere along the line what we gave to Mr. Hartman.
13 I'm not sure if we looked through the invoices. I could
14 tell you where that fit in place. That possibly could
15 have been the middle of July, since it's the only
16 invoice that actually said we gave them a drawing.

17 MR. DONAHUE: May I see them, John?

18 THE WITNESS: I couldn't swear when that
19 drawing was developed.

20 BY MS. FORREST:

21 Q. The first invoice that I've marked as Exhibit
22 4C actually says, "single cavity mold per drawing
23 furnished by AFM." It's dated June 8th, 1992.

24 Does that help refresh your recollection?

25 A. That's the one that I'm thinking -- it's

1 June. I need that copy back. I didn't see that one.

2 These are all July's.

3 It could possibly have been, but I don't
4 think it is this one. I think June 8th was too early in
5 the process of us coming up with runners. My
6 recollection is that it was later in the month when we
7 had the runner system. I couldn't swear to it.

8 MS. FORREST: I'll mark this as 4J, for the
9 record.

10 (Defendant's Exhibit 4J marked.)

11 MR. DONAHUE: 4J?

12 MS. FORREST: Yes.

13 BY MS. FORREST:

14 Q. You have figure 1.0 at the top of this
15 document. Did you number your drawings in sequence?

16 A. No. No, I didn't.

17 Q. Who made this drawing, if you know?

18 A. I did that.

19 Q. Is there a reason why you indicated that this
20 figure was 1.0?

21 A. I'm sure I had something in mind at the time,
22 but I have no idea.

23 Q. When do you think this drawing was made,
24 Exhibit 4J?

25 A. I'm thinking that that's -- it had to be

1 after the middle of June because of the runners that
2 were on it. We weren't dealing with runners -- end of
3 May, early June, we weren't working with runners. It
4 could have been anytime after -- I would think the
5 middle of June to August or September, I suppose.

6 Q. Who came up with the idea to use six runners
7 on this drawing?

8 A. It was one of the sessions we had when we
9 were talking about how we were going to do, but I don't
10 know.

11 MS. FORREST: You want to see this, Counsel?

12 MR. DONAHUE: There is something vague to me.
13 You keep saying "we," and I'm unsure as to who "we" is.
14 When you say "we," was it you and Guy? You, Guy, and
15 John? You and Alex?

16 THE WITNESS: I will clarify it from now on.

17 MR. DONAHUE: You keep saying "we." When you
18 say "we did this" and "we did that," the answer is
19 vague.

20 THE WITNESS: What was my last answer, and I
21 will try to clarify who "we" were?

22 BY MS. FORREST:

23 Q. When you use "we" at various points in time,
24 how about we do this: Wherever you think you need to
25 clarify who "we" are, why don't you just specify who was

1 in the room, with whom the conversation took place,
2 things of that nature.

3 A. Okay.

4 Q. We were talking about whose idea it was to
5 have six runners.

6 A. That conversation was held in
7 Mr. Bellehumeur's office with Mr. Bellehumeur, Mr.
8 Haarlammert, and myself.

9 Q. Do you know what type of educational
10 background Mr. Bellehumeur has?

11 A. No, I don't.

12 Q. Do you know if he has any type of a
13 manufacturing background?

14 A. I'm only aware that he was a developer.

15 Q. Do you know if he has any sort of art history
16 or art major in college?

17 A. Other than what we may have read.
18 Personally, I don't know what he has.

19 Q. How do you mean where you have read? Where
20 would you have read anything about Mr. Bellehumeur?

21 A. In one of the depositions that somebody --
22 that you or somebody had sent me. I read somebody had
23 made a claim that Mr. Bellehumeur had a degree in Arts
24 or something. I read it in one of the depositions.

25 Q. You mean declaration or deposition?

1 A. Well, it could have been a declaration.

2 Q. Who sent it to you?

3 A. I think it was one of the ones that you sent
4 me. I think it is one that I saw from Anno. I don't
5 know. It was one of the ones I read, though.

6 Prior to that, I had no idea what Mr.
7 Bellehumeur's background is other than he was a
8 developer, because that is where we met in his office
9 all of the time -- in Los Alamitos.

10 Q. What was name of his company?

11 A. I don't recall.

12 Q. Did RHI sublease space from Mr. Bellehumeur,
13 if you know?

14 A. I have idea.

15 Q. Are the RHI offices also located in Mr.
16 Bellehumeur's building?

17 A. I know that the RHI office was located across
18 the walkway. I have no idea who owned the building.

19 Q. But it was in the same general area as Mr.
20 Bellehumeur's office?

21 A. During the point in time that I dealt with
22 RHI, yes, it was.

23 Q. When you communicated with Mr. Bellehumeur,
24 did he provide you with a cell or a mobile number to
25 reach him?

1 A. I think I had his home number, but all of our
2 dealings were done in his office. Every time that I can
3 recall that we ever needed him, he was in his office.

4 Q. But there were times that you called him and
5 he was out on the job somewhere?

6 A. I'm sure there is times that I called and he
7 wasn't there, but where he was, I don't have any idea.

8 Q. You called a landline?

9 A. It was always his office line.

10 Q. So, how would you characterize your
11 involvement with the puck development? Would you
12 characterize it as you're one of the co-inventors?

13 A. Yes, from the standpoint of taking this puck
14 from concept to the end, I consider that I personally
15 had a large amount of input into the development of the
16 finalized puck. That's on the 410.

17 Q. I believed you testified earlier that you had
18 30-percent involvement. Would you consider that to be a
19 large involvement in the development?

20 A. Well, my comment originally at 30 percent was
21 independent from Mr. Bellehumeur -- what we came up
22 with. I believe we had a large involvement in it. What
23 we did was a large involvement in the 410 Patent.

24 Q. When you say "we," are you talking about --

25 A. I'm sorry. Mr. Haarlammert and myself.

1 Q. Can you quantify the amount of involvement
2 you had in inventorship of the 410 Patent? I am
3 unclear now what you meant previously by 30-percent
4 involvement.

5 A. Well, what I meant was -- the question that
6 was asked was how much design or how many changes did we
7 do with the input of Mr. Bellehumeur. At the time, I'd
8 said 30 percent. I would say that we -- I probably had
9 about 30. I would say 30 percent is probably a fair
10 number.

11 Q. You, solely, as an individual had in this
12 puck project?

13 A. I would say that Mr. Haarlammert and I had,
14 so independent of Mr. Bellehumeur's input.

15 Q. 30 percent?

16 A. And changes that we made to puck over the
17 course of time.

18 Q. Now, those 70 percent of the involvement that
19 Mr. Bellehumeur allegedly had in the puck development,
20 during those meetings, was he actually giving you ideas
21 that you went out and you implemented into the design
22 changes of the puck?

23 A. Yes, he did.

24 Q. Were there any design changes that he offered
25 that you thought weren't workable?

1 A. I'm sure over the course of going over it,
2 there was a lot of ideas from both sides, from all three
3 of us, that the other two didn't think were workable.
4 We tried everything. We manufactured a puck for
5 everything we thought conceivably could work.

6 Q. Those 70 percent of the meetings that you had
7 with Mr. Bellehumeur, during each and every time he made
8 a suggestion, did he give you a directive that he wanted
9 this change to be made?

10 A. To my recollection, we didn't -- the
11 relationship wasn't directive-oriented. If we sat down,
12 we knew what the purpose was there. We mostly had a
13 discussion and when the discussion was over, we all
14 agreed either to pick up and move on with it, or shelve
15 it and go find something else.

16 As far as directives, I don't ever recollect
17 that kind of a relationship where we were dealing with
18 directives.

19 Q. Can you estimate for me about how many
20 meetings you had with Mr. Bellehumeur in that type of a
21 setting, meaning you sat down to discuss the puck
22 development from your initial involvement with the
23 project in April or May of '92 until the end of your
24 involvement with the puck development?

25 A. I would say at least 20 to 25 times.

1 Q. How long did those meetings usually last?

2 A. No more than dropping off the puck for him to
3 take a look at when he had a chance. Some meetings were
4 two, three hours.

5 Q. Can you exclude those instances where you or
6 Guy or both of you merely dropped off a puck, versus
7 those times where you actually sat down and had a
8 meeting with Mr. Bellehumeur?

9 Of those 20 to 25 meetings, how many of those
10 meetings did you actually sit down with Mr. Bellehumeur
11 and have a discussion about the puck with him?

12 A. I would say at least -- no more than five
13 times where it would be a quick time to drop off the
14 puck and say that this is what we came up. We would
15 schedule a time to go out and test it, or find some
16 place to test it. Out of all of those, it was no more
17 than five times. It was a quick meeting.

18 Q. Did Mr. Bellehumeur ever come out with you
19 while the puck was being testing?

20 A. Yes, he did.

21 Q. About how many times would you estimate that
22 he came out with you to test the puck?

23 A. I think he was with Mr. Haarlammert or me or
24 together probably every time -- I think we went once to
25 Knott Avenue by ourselves. "By ourselves," meaning Mr.

1 Haarlammert and myself.

2 And Mr. Haarlammert and I went alone to San
3 Diego to bring the pucks to Mr. Chapey. Most all of the
4 other times, to my recollection, Mr. Bellehumeur was
5 with us.

6 Q. Do you know what type of involvement
7 Mr. Chapey had in RHI overall?

8 A. No, I don't.

9 Q. Do you know if Mr. Chapey was receiving any
10 royalties for the 410 'Patent?

11 A. I think he was.

12 Q. How did you get that information?

13 A. When I used to get printouts, I think his
14 name was on there as getting a percentage of, I think,
15 the net profit.

16 Q. Did Mr. Chapey add anything to the invention
17 of the 410 'Patent?

18 A. He gave us input on actually playing with it,
19 but for my myself or Mr. Haarlammert, to my
20 recollection, we never did any changes directly from the
21 input from Mr. Chapey.

22 Q. How about any of the other players, were any
23 changes made as a result of their recommendations?

24 A. No more so than our problems with it flipping
25 up on it's end, which was input that we got from the

1 players. If they didn't like the weight -- the input
2 from anybody that was testing was more dislikes and/or
3 likes. But nobody ever sat down with us and said,
4 "Okay, what are we going to go do to fix it?" We got to
5 make it smaller. We got to make it thinner, lighter,
6 heavier."

7 Those kind of conversations, in my presence,
8 we never had those with anybody other than the three
9 people -- Mr. Bellehumeur, myself, and Guy.

10 Q. Do you recall testing the puck and the
11 players commenting to you that the puck would flip up on
12 its side?

13 A. Yes.

14 Q. Do you recall that?

15 A. Yes.

16 Q. Can you give me an estimate of when that test
17 occurred?

18 A. Most of that happened between the middle of
19 May and probably the middle of June when we were on a
20 short fuse for getting something out right away.

21 Q. Do you recall the rate at which the puck was
22 being testing?

23 A. When?

24 Q. When the players complained to you it was
25 flipping up on its side.

1 A. We tried it mostly at Knott Avenue. It is an
2 outdoor rink. And my recollection is I think possibly
3 we had a problem when we were at the Forum. I couldn't
4 swear to that one, but I know we definitely had a
5 problem in the outdoor rink.

6 Q. Was Anno Willison there during that time in
7 question at Knott Avenue?

8 A. He may have been there once or twice.

9 Q. So, if the puck is flipping on its side, what
10 does that say to you was the problem?

11 A. The original problem was that the material
12 sliding across the rink was either too rough or too much
13 friction, and if it wasn't hit perfectly, the puck would
14 start to get up on an edge and once it got on the edge,
15 because of the material being -- the consistency it was,
16 it would catch the edge and then it would flip up on its
17 end. Once it got up on its end, it would roll
18 indefinitely until it either hit the wall or somebody
19 knocked it down with a stick.

20 Q. Was Guy with you at that testing?

21 A. He was with me I think probably -- I think we
22 were probably together at least 85 to 90 percent of all
23 of the testing.

24 Q. Did you discuss possible improvements to
25 solve that problem during the testing there at the Knott

1 Avenue rink?

2 A. No, not at the rink. I don't remember ever
3 coming up with a solution. The solution, to my
4 recollection, was done in Mr. Bellehumeur's office after
5 we decided it was truly a real problem.

6 Q. Who at first broached the idea of having --
7 strike that.

8 What was the solution that was suggested to
9 cure the problem of the puck rolling on its side?

10 A. We put on the runners.

11 Q. Who first broached that idea?

12 A. That was a conversation we had in
13 Mr. Bellehumeur's office, and to my recollection, Mr.
14 Bellehumeur had some drawings and we started talking
15 about it.

16 Q. When you say "we" --

17 A. I'm sorry. Mr. Haarlammert, Mr. Bellehumeur,
18 and myself.

19 Q. Were in the room?

20 A. Yes.

21 Q. Who first broached the idea of the runners at
22 that meeting?

23 A. My recollection is it would be
24 Mr. Bellehumeur.

25 Q. So, if Mr. Haarlammert testified that you two

1 came up with the runner idea, would that be incorrect?

2 MR. DONAHUE: Well, I'm going to object. It
3 assumes facts not in evidence.

4 If you've got testimony that says that's the
5 case, Counsel, then the question would be proper. He
6 could misstate the witness's testimony. It assumes
7 facts not in evidence.

8 BY MS. FORREST:

9 Q. Do you want to take a break for five minutes,
10 John?

11 A. I'm fine.

12 Q. Well, why don't we take a break for five
13 minutes.

14 A. Okay.

15 MS. FORREST: Off the record.

16 (Recess.)

17 MS. FORREST: Back on the record.

18 Could I have the last question where we left
19 off?

20 (The following record was read by the
21 reporter:

22 "Q. So, if Mr. Haarlammert testified that
23 you two came up with the runner idea, would
24 that be incorrect?").

25 BY MS. FORREST:

1 Q. You said you weren't able to answer that
2 question. I have in front of me a copy of
3 Mr. Haarlammert's March 7th deposition transcript which
4 was taken at his home. On Page 19 about Line 5 on down,
5 I'll read the question and answer.

6 We were discussing in general the
7 inventorship of the 410 Patent. Mr. Haarlammert says
8 at Line 11, "As for the building of the puck, I provided
9 and my partner provided Alex with prototypes which at
10 the time he drew down on a sketch. So, if he's trying
11 to make a statement that he provided us with ways of
12 building this puck, it's not a true statement. He did
13 not. We were involved from the very beginning. We went
14 through four or five different generations of the puck.
15 We tried different materials, different runners,
16 different ways. Alex did put his two cents in here and
17 there when he would bring it in, and he would give
18 suggestions.

19 As far as manufacturing the puck, the actual
20 agreement was that we were going to be the manufacturer
21 of the puck at a reasonable negotiated price which
22 didn't happen. Because when we went to sit down and
23 negotiate the puck, they told us they had already gave
24 it to Sport Court."

25 That's kind of venturing off into materials

1 that we're going to be covering later. The general crux
2 of what Mr. Haarlamert is saying is that you and Guy
3 invented this puck.

4 Do you agree or disagree with
5 Mr. Haarlamert's statement?

6 A. I disagree from the standpoint that I think
7 Alex offered more than two cents worth of input. My
8 recollection of the situation is we collaborated on this
9 from the manufacturing end, and we definitely brought
10 much more to the table than Alex did from how to make
11 the molds and what to come up with to make it. That was
12 our end of the business and that's what we were brought
13 on to do.

14 As far as distinctly who came up with the
15 runner idea, it was 10, 11 years ago when we were
16 sitting in a room and we were throwing this around. I
17 couldn't swear one way or the other who came up with
18 first concept, but the drawings that you have here that
19 I showed you came from Mr. Bellehumeur. They didn't
20 come from me.

21 If they came from Guy independently without
22 me knowing it, I don't have a response one way or the
23 other. It was a collaboration of three of us putting
24 our heads together. To sit here and divide the pie up
25 into thirds, I don't have the memory or the wherewithal

1 to sit here and slap percentages on it. I just don't
2 know.

3 Q. We just had a five-minute break. Did you
4 have occasion to talk to Mr. Bellehumeur or to
5 Mr. Donahue, his attorney?

6 A. No. One question was, Mr. Bellehumeur asked
7 me if my cell phone worked.

8 MR. DONAHUE: Alex.

9 THE WITNESS: I'm Sorry. Alex asked me if my
10 cell phoned worked.

11 BY MS. FORREST:

12 Q. There's another portion in Mr. Haarlammert's
13 transcript on Page 29. It starts about Line 15 or so.

14 It says, "What individual or individuals do
15 you believe were the inventors of the 410 'Patent?' To
16 which he responds, "Well, my belief is that John and I
17 were the people who built this puck. If Alex was
18 involved in it, he was involved in it, but he was not
19 the one that sat down and created the tools and the
20 design and the first pucks to be built."

21 Then I asked him, "How would you characterize
22 Mr. Bellehumeur's role in this whole inventorship
23 process, if anything?"

24 To which Guy responded on page 30, "He was
25 our focal point. He was the one that sat down with us

1 and once we got it going, I mean cut and dry, he was
2 probably the guy that legally was supposed to lock it
3 up. He was the one who lined up the patent, and the
4 reason for that was, is he didn't want it copied in the
5 market, so he wanted to get it on paper, tied up, so no
6 one could copy it."

7 Do you see that? I see Mr. Donahue provided
8 you with a copy.

9 A. Yes, I see it.

10 Q. Do you dispute Mr. Haarlammert's testimony?

11 A. I don't necessarily dispute it.

12 Again, it was 10, 11 years ago. Trying to
13 remember what went on inside offices -- I think we all
14 had input into it with Guy's perception of each of the
15 other -- Mr. Bellehumeur's and my input into it. It's a
16 matter of what you remember 10 or 12 years ago. It's
17 putting percentages on something you never intended to
18 document or remember 12 years later.

19 He has a different perspective on this is all
20 I can tell you. I remember the way I remember it
21 happening, and Mr. Haarlammert remembers it his way.

22 I think there was definitely design input by
23 all three parties. He is right as far as production and
24 the molds and everything. There is no doubt that Mr.
25 Haarlammert and I did all that work.

1 As far as the input into the design, I
2 believe we collectively came up with the design for the
3 puck. Whether one person had 20 percent and whether one
4 person had 70 percent, it is a tough call. There's too
5 many meetings, too many times to remember who exactly
6 said, "This is what we're going to do. We are going to
7 shave off this radius or do that." I don't remember.

8 Q. I appreciate that.

9 But are you still comfortable with your
10 estimate that Mr. Bellehumeur was responsible for
11 70 percent of the puck depicted in the 410 'Patent?

12 A. No.

13 Well, the 70 percent is being worked out on a
14 question that you asked me on how much independently did
15 Mr. Haarlammert and I change the puck, and I said about
16 30 percent of the time we made changes to the puck
17 without calling up Alex and saying, "Mr. Bellehumeur, I
18 am going to change the radius. I am going to do this."
19 That alludes to what you're saying about 70 percent of
20 it is Mr. Bellehumeur.

21 What I am saying is, the rest of the time it
22 was -- the other 70 percent was done collectively
23 amongst the three of us -- Mr. Bellehumeur,
24 Mr. Haarlammert, and myself. I just want to make sure
25 we understand from my standpoint where that 70 percent

1 comes from.

2 Q. I don't mean to harp on that percent. I'm
3 entitled to your best estimate. Let's say it this way,
4 so the record is clear once and for all.

5 What overall percentage would you deem
6 Mr. Bellehumeur contributed to the inventorship of the
7 410 puck?

8 A. If we're talking about the design of the
9 puck, then Mr. Bellehumeur was involved as the rest of
10 us were. If not, maybe more from the -- in my mind,
11 from the runner standpoint.

12 But as far as the manufacturing portion of
13 it, how we built it, how we designed the tooling and
14 whatever, I think Mr. Bellehumeur had very little to do
15 with it because it wasn't something he was involved
16 with.

17 Q. Once again, so the record is clear, how do
18 you know the input that Mr. Bellehumeur provided was his
19 own?

20 A. I don't.

21 Q. Do you recall a meeting in which you and Guy
22 placed a prototype puck you had on a table, and
23 Mr. Bellehumeur took that puck and drew what he termed
24 was a poor-man's patent?

25 A. No, I don't.

1 Q. You don't recall that meeting?

2 A. (Witness shakes head.)

3 Q. If Guy testified at Page 44 of his transcript
4 about Line 25 saying, "We had given him a couple of
5 pucks at a meeting and we -- he uses it like you do,
6 John. He meant you and he.

7 A. Okay.

8 Q. "He came back the next meeting we had and he
9 had a drawing of the pucks. When he had the drawing of
10 the pucks, he took it and drew it all out, put a date on
11 it, put in an envelope and mailed it to himself." "Why
12 did he do that?" "He explained to us that it was a
13 poor-man's patent, and that it was a way to kind of
14 protect himself of the date that we came up with this
15 puck."

16 Do you recall that meeting taking place?

17 A. I don't recall the meeting. I recall the
18 conversation of putting the drawing in an envelope and
19 sending it back to start the process, but I don't
20 remember the meetings.

21 Q. What is your understanding of
22 Mr. Bellehumeur's role at RHI?

23 A. We're talking 12 years ago, 1992?

24 Q. About the time you were involved in the puck
25 development.

1 A. My understanding was that Mr. Bellehumeur was
2 an officer of the company or corporation -- whatever it
3 was. That he was charged with the puck -- the
4 development of the puck, coming up with the puck.

5 While the others were doing their thing and
6 making the teams come together, he was charged basically
7 with the nuts and bolts of burning in all of the
8 elements of the equipment together.

9 Q. What is your understanding of who bestowed
10 that duty upon Mr. Bellehumeur?

11 A. My opinion would be that it was Mr. Kenyon,
12 Mr. Murphy, and Mr. Bellehumeur working out how it was
13 going to go together, because my assumption through all
14 of this was those were the three major entities that ran
15 RHI.

16 Q. If Guy used the term "contact person" to
17 describe Mr. Bellehumeur, would that be an accurate
18 description of his duty at RHI? Contact person meaning
19 for the puck development.

20 A. Mr. Bellehumeur was our interface and the
21 only person we ever had conversation with other than
22 passing conversation. Mr. Bellehumeur was the only
23 person we had absolute contact with in developing the
24 puck.

25 Q. Was anyone else ever present in those puck

1 development meetings that you had?

2 A. Occasionally, Mr. Dennis Murphy was. Other
3 than that, I'm sure Mr. Chapey was once or twice.

4 Q. Did Mr. Murphy ever offer any suggestions to
5 change the puck?

6 A. No.

7 Q. Did Mr. Paul Chapey ever make any suggestions
8 on how to change the puck?

9 MR. DONAHUE: Objection. Asked and answered.
10 But go ahead.

11 THE WITNESS: Mr. Chapey offered us in
12 conversation his evaluation performance, but I don't
13 ever recall Mr. Chapey sitting there and drawing a
14 picture and saying this is what you need to do. You
15 need to change this or that to make it work. His was
16 mostly from a professional-user standpoint of what his
17 playing with the puck led up to.

18 Q. Would you be surprised if Mr. Bellehumeur has
19 declared himself to be the sole inventor of the puck
20 depicted in the 410 Patent, and you and Guy were merely
21 consultants on the project?

22 A. Yes, I think we did more than merely
23 consultants.

24 Q. I'm going to attach as Exhibit 6, and you can
25 look at this, John. It is a verified response meaning

1 Mr. Bellehumeur signed this under oath.

2 (Defendant's Exhibit 6 marked.)

3 BY MS. FORREST:

4 Q. It's entitled, "Plaintiff's Response to
5 Defendant's First and Second Set of Written
6 Interrogatories." It was signed by Mr. Bellehumeur on
7 or about the 14th of September.

8 In response to Interrogatory No. 1, which my
9 office propounded to Mr. Bellehumeur, I'll read
10 Interrogatory No. 1.

11 "State all facts upon which you base your
12 allegation in Paragraph 8 of your complaint that you are
13 the sole and exclusive owner of the 410 Patent as of
14 January 4, 1994." Now, it specifically asked about
15 ownership.

16 But in response to this question,
17 Mr. Bellehumeur states the following: "Plaintiff is the
18 sole inventor of the puck for use on non-ice surface.
19 The only involvement of John Nehmens, the II, and Guy
20 Haarlammert and pertaining to the development of the
21 non-ice hockey puck was as consultants."

22 So, you're saying that does not comport with
23 your understanding of your involvement in the puck
24 development?

25 A. That's true.

1 Q. Here's another declaration I want to bring to
2 your attention. I'll mark this as Exhibit 7.

3 (Defendant's Exhibit 7 marked.)

4 MS. FORREST: This was a declaration that
5 Mr. Bellehumeur submitted to the patent office where he
6 was discussing his inventorship role of the puck. And
7 it appears that at about three quarters of the way
8 through -- it's entitled, "Declaration under 37 CFR
9 1.132." It's dated January 11th, 1996.

10 MR. DONAHUE: Is that the declaration he
11 submitted with regard to the 161 or the 410?

12 MS. FORREST: Let me finish my question, then
13 if you have an objection, you can object.

14 MR. DONAHUE: What you're doing is you're
15 misstating the nature of that document. That is a
16 declaration submitted in response to the 161 'Patent,
17 not the 410.

18 MS. FORREST: If you want to mark the
19 transcript, you're more than welcome to.

20 MR. DONAHUE: That's fine. I just want to
21 clarify that for John.

22 MS. FORREST: Let me read it. I think it
23 will clarify it for you.

24 BY MS. FORREST:

25 Q. Alex R. Bellehumeur declares as follows: No.

1 1, "I am the inventor of the subject matter of the
2 above-identified patent application.

3 During the first half of 1992, I was one of a
4 group interested in forming a professional sports league
5 for the sport of roller hockey. At that time, pucks for
6 use on a non-ice surface were made from a polymer and
7 such polymeric pucks were either hollow or solid and had
8 no runners. As a result, these pucks were too slow to
9 make the game entertaining. It required that the
10 players skate at a slow speed and the game lacked the
11 excitement of ice hockey. I, therefore, began working
12 on a puck which would speed up the game. I filed a
13 patent application which matured into U.S. Patent No.
14 410." So we are talking about the 410 'Patent, as well.
15 "This patent names me as the inventor with would two
16 co-inventors.

17 As of June 1st, 1992, I had devised the puck
18 shown in the sketch identified as Exhibit "I" attached
19 hereto. This puck as shown by the drawing in the lower
20 right-hand corner had unitary runners which were
21 fabricated from a different material than the body of
22 the puck and had heads which extended from the unitary
23 runner above and below the upper and lower surfaces of
24 the puck." He's talking about runners here.

25 "Thus, the concept of a unitary runner made

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1 Q. Do you agree with his statement at Paragraph
2 5 of the declaration saying that the concept of the
3 unitary runner made of a material -- it should be
4 having, a lower coefficient of friction than the puck
5 was entirely my idea, not the idea of my co-inventors of
6 the parent application which has matured into the U.S.
7 Patent No. 410"?

8 A. Well, we get back into the same thing from
9 Paragraph 4. It's a situation of trying to remember the
10 course of events that led to coming up with the drawing
11 and the runners.

12 Q. Would it be fair to say that you simply don't
13 remember?

14 A. It would be fair to say that I don't remember
15 the chain of events.

16 Q. So, you don't remember whether or not -- I
17 don't want to misstate your testimony. I want to make
18 sure it's clear.

19 You don't remember who the inventor of the
20 runner system is?

21 A. Mr. Bellehumeur had the drawings during the
22 conversation. When we identified that there was a
23 problem with it -- my recollection is that the drawing
24 existed when we sat down and had a meeting, and those
25 drawings were Mr. Bellehumeur's. Whether he designed

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1 that on his own, I don't know. That is my recollection
2 that we had determined -- we sat down. There was a need
3 for runners. We had to go figure out how to make it
4 work.

5 And I'm not being evasive, it is just I
6 really don't remember the conversation, but I know those
7 drawings existed before we came up with a puck without
8 runners.

9 Q. All I can get is your most truthful
10 testimony. That's all I'm asking from you. Thank you
11 very much.

12 Now, attached to this declaration is a
13 drawing that was submitted by Mr. Bellehumeur attached
14 as Exhibit 5 to this whole Exhibit 7.

15 Do you see that drawing in front of you?

16 A. Yes.

17 Q. Is there a title on that drawing?

18 A. Yes.

19 Q. What does it say?

20 A. "Inline Roller Hockey Puck invented by Alex
21 Bellehumeur, June 1st, 1992."

22 Q. I'll refer you back to the drawings that will
23 be attached to your transcript as Exhibit 4A and 4B.

24 Does that drawing appear to be similar in
25 your mind to those --

1 A. The one drawing is identical to 4B, less the
2 title.

3 Q. Do you recall, John, if the drawing indicated
4 as Exhibit 4B to your transcript and as Exhibit 5 to
5 Exhibit 7, is the same drawing that Mr. Bellehumeur
6 might have made when you sat in a meeting with he and
7 Guy and he was making what he declared to be a poor
8 man's patent?

9 A. The drawings 4A and 4B that you have, were
10 the drawings that I got copies of at that meeting. To
11 my recollection, those drawings were done before we
12 started the meeting. I did not see him draw those.

13 Q. One more question and I'll move on.

14 Did Guy and you attend that meeting at the
15 same time?

16 A. To my recollection, I'm sure we did.

17 Q. Did you usually go to the meetings together?

18 A. Yes, we did.

19 Q. So, it's not a matter of you arrived 20 or 30
20 minutes later than Guy?

21 A. Not that I remember.

22 MR. DONAHUE: You're named on the 161,
23 anyway:

24 MS. FORREST: If you have a question, Joe,
25 you can wait until your turn to examine the witness.

1 MR. DONAHUE: That wasn't a question.

2 MS. FORREST: Or comments. Thank you.

3 BY MS. FORREST:

4 Q. You mentioned previously the name of Dennis
5 Murphy. Have you met Mr. Murphy previously?

6 A. Yes, I have.

7 Q. Can you give me an estimate of when the last
8 contact you had with Mr. Murphy?

9 A. Sometime in '95. I guess late '94, '95.

10 Q. I apologize if I asked you this previously.
11 When did all of your involvement with RHI
12 cease, and can you give me a month and a year?

13 A. My involvement with RHI in respect to
14 Mr. Bellehumeur and Mr. Murphy ceased sometime in
15 January of '93 -- somewhere in January of '93.

16 Q. I'm going to mark as Exhibit 8 a declaration
17 that was submitted by Dennis Murphy.

18 (Defendant's Exhibit 8 marked.)

19 BY MS. FORREST:

20 Q. He signed this declaration on or about
21 February 6, 2002. Paragraph 4 on Page 2, I'm going to
22 show this to you. He states as follows: "I can state
23 for a fact that it was Mr. Bellehumeur who created the
24 invention depicted in the 410 Patent. I know this
25 because the RHI founders, Larry King, Alex Bellehumeur,

1 Ralph Backstrom and I assigned to Mr. Bellehumeur the
2 task of locating a puck that was fast enough for
3 professional play." Let me show that to you.

4 Do you agree with that statement made by
5 Mr. Murphy?

6 A. Are you talking about Paragraph No. 4?

7 Q. Yes, I am.

8 MR. DONAHUE: I'm going to ask that the
9 witness read the entire declaration, instead of taking
10 things out of context.

11 THE WITNESS: Could I have the question,
12 again?

13 BY MS. FORREST:

14 Q. Sure. I'm just asking you if that comports
15 with your understanding?

16 A. My understanding of the situation with RHI
17 was that Mr. King, Mr. Bellehumeur, and Mr. Murphy were
18 founders. I'm not real sure where Mr. Backstrom fits
19 into this. I knew Mr. Backstrom, but I wasn't sure how
20 he fits into the decision. I know that Mr. Bellehumeur
21 was given -- was tasked with the puck -- development of
22 the puck, or finding a puck. As far as whether he was
23 assigned it or not by these people, I have no idea.

24 As far as testing them, there were quite a
25 few pucks tested before we went into the initial stages.

1 We tried everybody else too, to see how they all reacted
2 to the surface. I'm not sure if I understood your
3 question.

4 Q. Let me move on to Paragraph 5. I will just
5 preface this first of all by asking if, to your
6 knowledge, Mr. Bellehumeur contributed any funds to the
7 development of the 410 Patent? Do you know, first of
8 all, whether or not he did?

9 A. His personal funds?

10 Q. Correct.

11 A. Do I know for a fact?

12 Q. Do you know?

13 A. Do I know for a fact? No.

14 Q. Paragraph 5 of Mr. Murphy's declaration he
15 states: "In fact, it was Mr. Bellehumeur who personally
16 funded and raised all the monies needed to design and
17 manufacture what is now the 410 patented hockey puck."

18 Do you know whether that's true?

19 A. I heard through hearsay. For a fact, I don't
20 know.

21 Q. Tell me a little bit more about Fast Trax.
22 What was the purpose of Fast Trax? Why was it created
23 by you and Guy?

24 A. The purpose of Fast Trax was created by us
25 solely to separate costs, separate monies going from the

1 machine shop business which we had Air Frame, and the
2 monies and costs and time spent in Fast Trax, because at
3 that point we were in the process. We had envisioned
4 that we would start a company, Fast Trax, to manufacture
5 the puck in the big picture at the end.

6 But also, it was because of the accounting
7 and keeping track of all the costs from the different
8 people, so we could at least at the end of the year be
9 able to go back in to determine what monies were going
10 to the shop and what monies were coming from the task of
11 the puck.

12 Q. So, did Air Frame Manufacturing exist
13 concurrently with Fast Trax Enterprises?

14 A. Well, Fast Trax Enterprises never really
15 existed except in our minds and on paperwork that we
16 generated to RHI and Mr. Bellehumeur.

17 Air Frame Manufacturing was 100 percent the
18 operation. The intention was to make Fast Trax a
19 separate entity if indeed this whole manufacturing
20 process came to fruition.

21 Q. Did you have plans to eventually incorporate
22 Fast Trax?

23 A. We had plans to at least do a dba or
24 something if it moved to where we thought it was going
25 to go.

1 Q. You're speaking in past tense of Fast Trax.

2 I assume it's no longer in existence?

3 A. Neither one have been in existence for --
4 actually, Fast Trax legally was never in existence. Air
5 Frame Manufacturing has been out of existence for over
6 eight years.

7 Q. So, is it true that you invested your own
8 money into Fast Trax, or were you funded by any outside
9 entity?

10 A. You're talking about the investment in the
11 molds and the process where most of that was done
12 outside the world of Fast Trax. Fast Trax came towards
13 the end.

14 We, Air Frame Manufacturing, fronted the
15 money for the molds. And all the process and the
16 materials on our side, we recouped a portion of that
17 cost at the end.

18 Q. About how much do you estimate you and Guy
19 fronted for puck development?

20 A. My best guess would be around 16 to \$20,000.

21 Q. I'll represent to you, and I can find exactly
22 where it is, if you require it, but Guy estimated that
23 Fast Trax, or you and he, invested approximately 80 to
24 \$100,000 of your own money to develop the puck. Would
25 that be accurate?

1 A. That would be less complete -- I would be
2 surprised if it was that much. He could be right.

3 Q. Why did you maintain these two personal
4 folders which will be marked as Exhibit 4 to your
5 testimony? Why have you maintained these for this many
6 years?

7 A. I've maintained these folders mostly -- one,
8 because of the nature of the way I am. I keep a little
9 bit of everything.

10 Secondly, for quite a few years, I was
11 leading the charge to try to recover monies due us by
12 RHI. After it was passed off in -- as a result, we just
13 kept all the agreements, because it seemed along the
14 lines of conversation. It was always a question by
15 different parties on how much involvement we had, what
16 the agreements were, were the agreements real, who were
17 they signed by. It's just a matter of -- I had them and
18 there is no reason to get rid of them. They were still
19 alive, as far as we were concerned.

20 Q. So, was it your intention to keep the files
21 around until you were paid all the monies due to you and
22 Guy?

23 A. I never gave a thought about it. When they
24 were going to be thrown out or destroyed -- it was a
25 matter of -- like I said, we put them away "x" amount of

1 years ago and didn't drag them out until all this
2 surfaced.

3 Q. Do you have any invoices in those two folders
4 to indicate how much investment monies you and Guy put
5 into the development of the 410 puck?

6 A. You mean other than what's from Mr. Hartman?
7 Are you saying invoices from people that did work for
8 us?

9 Q. I'm just asking if you have any backup data
10 in those file folders in front of you to indicate how
11 much money you and Guy invested into the puck
12 development.

13 A. There is partial ones in here. A lot of them
14 were sucked up into Air Frame Manufacturing.

15 Q. Did you happen to bring any of those Air
16 Frame records with you?

17 A. Those are all gone.

18 Q. Would you mind just taking a moment and
19 pulling those records that you can easily identify?
20 Just take a minute or two to try to pull them out to
21 document the expenses that you incurred.

22 A. There's some from Master-Carr, from a machine
23 shop.

24 Q. Would you also include the invoices you
25 previously provided me that were from Hartman

1 Enterprises and the costs that you incurred?

2 A. Absolutely.

3 There's one. I'm sure I don't have a
4 calculation of -- you figure what our time was worth in
5 the development process over a course of eight or nine
6 months, Mr. Haarlammert's estimation may be close. When
7 I was looking at it, I'm looking at it from hard dollars
8 which I can define by receipts and invoices. If he is
9 looking at it in the big picture -- I don't know the
10 contents of his answer. But if he looked at it in the
11 big picture based on the time and effort we spent over
12 the course of these months, 70,000 maybe not be too
13 unrealistic. We spent a tremendous amount of time doing
14 this.

15 Q. Let me ask you for an estimate, again.

16 Can you estimate globally how much time you
17 and Guy spent on puck development? Hundreds of hours?

18 A. At least hundreds and hundreds of hours. In
19 the process of between testing, between development,
20 between spending time at Mr. Hartman's through the whole
21 process, we're probably talking hundreds of hours --
22 machine shop time. We played with some things at the
23 shop. Just back and forth to Mr. Bellehumeur's office
24 from our shop was probably an hour and a half worth of
25 the time, so, it was hundreds of hours.

1 Back to my response to Mr. Haarlammert's
2 number. It's conceivable when you figure what our time
3 was as two shop owners -- leaving the shop to go do this
4 and work on it. It is conceivable that may be that kind
5 of money did exist, if that's the way he is looking at
6 it. I don't know how he looked at it.

7 Q. Typically, how much would you charge per hour
8 for your time in a project like this?

10 Q. How much do you wish you charged versus how
11 much would you actually charge? Whatever you can
12 provide.

16 Q. There is a group of invoices. Would you mind
17 if I clumped all these together and collectively called
18 them -- we'll add them on to the invoices that already
19 exist for Hartman.

24 (Defendant's Exhibit 9 marked.)

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1 Q. Were you ever approached by anyone on behalf
2 of RHI with the opportunity to manufacture the puck that
3 you were currently trying to develop?

4 A. Yes, we were. We were asked in August to
5 come up with a price to manufacture the pucks.

6 Q. August of '92?

7 A. '92.

8 Q. Who approached you and asked that you come up
9 with a price to manufacture the puck?

10 A. I think it was a joint -- Mr. Bellehumeur and
11 Mr. Murphy.

12 Q. Did that take place in a meeting?

13 A. A meeting or a phone call.

14 Q. Now, as far as you can recall, in August of
15 '92 when you were approached and asked to manufacture
16 the puck, what generation of puck, for lack of a better
17 term, were you and Guy at in the development of the puck
18 process in August of '92?

19 A. Except for some very fine refinements, we
20 were there with what we envisioned to be the first true
21 production of the puck.

22 Q. Did you ultimately get to manufacture the
23 puck?

24 A. No, we didn't.

25 Q. Were you promised a percentage of royalties?

1 A. Yes, we were.

2 Q. Do you recall what that percentage was?

3 A. Each of us were to get five cents a puck and
4 two and a half percent of the profit.

5 Q. Two and a half cents of profit?

6 A. Two and a half percent of the profit.

7 Q. Now, eventually, ownership of the 410 'Patent
8 was passed to another entity; is that correct?

9 A. Correct.

10 Q. Do you recall when that transfer took place?

11 A. I think it was either late January or
12 February of '93, but I really don't recall. Maybe a
13 little later.

14 Q. Did you and Guy have an option as to whether
15 or not you wanted to transfer your ownership interest in
16 the 410 'Patent to this other entity?

17 A. I'm not sure what you mean by option.

18 Q. Let me ask: First of all, did you consider
19 yourself to have any ownership interest in the 410
20 'Patent?

21 A. Yes, we did.

22 Q. How was that ownership interest split between
23 you, Guy, and Mr. Bellehumeur?

24 A. We were co-listed on the patent.

25 Q. Is it your understanding it was 33 and a

1 Q. About when did they start, and for how long
2 did they continue?

3 A. They continued through I'm thinking '95 --
4 late '94, '95. I could be wrong, but that's what I
5 think I remember.

6 Q. When did they start, if you recall?

7 A. They started as soon as the agreement was in
8 place. They started manufacturing pucks -- it had to be
9 sometime in mid '93 or late '93.

10 Q. Now, were the royalties to continue only
11 until such time as your initial investment had been
12 satisfied? What was the structure of the royalty
13 payments?

14 A. The royalties were based on the manufacture
15 and selling of the puck. It had no tie into recovering
16 costs.

17 Q. Were you promised to receive at least a
18 minimum amount of money on the return for royalties?

19 A. No, not in the oral agreement. It was
20 strictly based on if they sold -- if the manufacturer
21 sold the pucks, we got a royalty.

22 Q. What was your understanding of what was to
23 happen to the royalty payments if ownership of the 410
24 Patent was transferred to someone else?

25 A. As it was in early January or February?

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1 Q. Yes.

2 A. The agreement was that our royalties be
3 passed onto whoever owned them. They were responsible
4 to make a -- reconcile the inventories, the sales, and
5 make payments accordingly.

6 Q. So, I'm clear, if ownership of the puck was
7 transferred to someone else, the royalty structure was
8 to continue. In other words, you were to continue to
9 receive five cents per puck and two and a half percent
10 of the profit; is that correct?

11 A. Yes.

12 Q. Do you know if Guy was to receive the same
13 amount?

14 A. The exact same amount.

15 Q. Did you have to engage in a bidding process
16 before the right to manufacture the puck was bestowed
17 upon Fast Trax?

18 A. We were asked to come up with a quote
19 "packaged and unpackaged," and at the same time, there
20 was a Sport Court operation in Salt Lake City. I think
21 they owned a team and they had some kind of ownership in
22 RHI. At the end of November, which was our last quote,
23 after we did everything they wanted us to do, Sport
24 Court came in with a quote that was less money per puck.

25 Q. Have you ever met Dan Kotler?

1 A. From Sport Court?

2 Q. Yes.

3 A. Yes.

4 Q. When I say, "Dan Kotler," you know that he is
5 the head of Sport Court who was involved at RHI?

6 A. Who was involved at the time, yes.

7 Q. So, we're on the same page.

8 At the time you were asked to prepare quotes
9 for manufacturing costs, did you know at that time that
10 Mr. Dan Kotler was also involved in the bidding process?

11 A. Not in the initial stages in August. In
12 fact, I don't think I knew that until after the final
13 November quote.

14 Q. Were you aware at any time who your
15 competitors in the bidding war were?

16 A. I think until RHI saw the price, I don't
17 think that anybody was -- I didn't believe anyone else
18 was involved, no.

19 Q. What were you told exactly? Who were you
20 supposed to submit your quote to?

21 A. I was to submit the quote to Mr. Bellehumeur
22 for RHI.

23 Q. Who came up with the manufacturing quotes for
24 Fast Trax?

25 A. The effort was between -- Guy and myself came

1 up with it.

2 Q. Did you have to obtain dedicated vendors
3 before you could arrive at that figure for RHI?

4 A. We got quotes for large production molds from
5 Hartman, Blister Packs and Decals -- anything it took to
6 put the product on the market -- on the shelf.

7 Q. Did you enter into any outside agreements
8 with any of those vendors in anticipation of
9 manufacturing the 410 Patent?

10 A. Are you talking signed agreements?

11 Q. Yes.

12 A. No.

13 Q. I'll attach as Exhibit 10 next in order a
14 November 28th, 1992, letter from Fast Trax Enterprises
15 to Mr. Bellehumeur. It's actually signed by you and it
16 has an attachment which appears to be a manufacturing
17 cost breakdown. I'm going to show that to you --

18 (Defendant's Exhibit 10 marked.)

19 THE WITNESS: I have it right here.

20 BY MS. FORREST:

21 Q. Do you recall that letter?

22 A. In detail, no. Now that I'm looking at it, I
23 think this was the best and final quote. I think this
24 was in response to -- looks like it was in response to
25 when we found out that Sport Court was going to

1 manufacture it. They came up with their cycle times.

2 We went back to our people and there was a
3 conversation on what they perceived their costs were and
4 their cycle times was realistic in manufacturing the
5 puck. Obviously, because we wanted to get the order.
6 Obviously, from our standpoint, raised issues that we
7 thought may have been lacking in Sport Court..

8 Q. As far as --

9 A. Manufacturing.

10 Q. -- recirculating scrap materials and that
11 nature?

12 A. Exactly.

13 Q. So, what was your ultimate best price per
14 puck that you offered to RHI?

15 A. You have it. I don't have it.

16 Q. Let's refer to the document since this will
17 actually be attached to your transcript.

18 A. It looks like a \$1.40, \$1.70, \$1.86. That
19 sounds probably about right based on what we were doing
20 with the package. That definitely is what we gave them.

21 Q. And that includes shipping costs and
22 everything? You have different prices. I see under No.
23 9, "Options."

24 A. Right.

25 There was three ways that it was quoted. As

1 I remember, one was puck complete. We would just dump
2 "x" amount of pucks into a palletized box and send it to
3 them. They would take care of packaging and shipping,
4 so we basically built the price.

5 Q. Was there to be a logo placed on the package?

6 A. Yes, there was. There was an RHI logo. It
7 was a blade of a hockey stick, as I remember.

8 Q. Do you know who obtained that logo?

9 A. We priced it into ours. We went to an
10 independent printing house to get a price for quantity.
11 Whatever the quantity was that we priced -- that we
12 would put it on.

13 Q. As far as getting that RHI logo -- the
14 trademark?

15 A. I'm sure it was by RHI.

16 Q. Do you have independent knowledge that it was
17 trademarked?

18 A. No, I don't.

19 Q. Did someone provide you with the actual logo
20 and ask if you were going to be able to --

21 A. Yes.

22 Q. -- manufacture it and place it on puck?

23 A. Yes.

24 Q. Who provided you with --

25 A. Mr. Bellehumeur.

1 Q. So, do you know who ultimately was awarded
2 the manufacturing contract?

3 A. Sport Court. To my knowledge, it was Sport
4 Court.

5 Q. Do you know how much they said they could
6 manufacture the puck for?

7 A. I'm sure I did at the time, but right now it
8 was significantly less. It was under -- as I remember,
9 it was a little under a dollar. It was somewhere around
10 90 cents, I thought.

11 Q. Now, in this November 28th, 1992, quote, what
12 materials did you anticipate using for the puck?

13 A. It was a beaded polymer -- whatever the
14 formula was that we came up with.

15 Q. Did this anticipated puck design have runners
16 on it?

17 A. Yes, it did.

18 Q. How many runners, do you recall?

19 MR. DONAHUE: Could I see that?

20 THE WITNESS: My guess is three. But it's a
21 guess. I think it had three or five.

22 BY MS. FORREST:

23 Q. Was the design already agreed upon for the
24 puck by November '92?

25 A. Yes, it was.

1 Q. And it was the design that you and Guy helped
2 come up with?

3 A. Yes.

4 Q. So, there was a dedicated design in place?

5 A. Yes.

6 Q. Looking at Exhibit 5, can you recall whether
7 or not that dedicated design is represented in the
8 drawings that are contained in the 410 'Patent?

9 A. Yes.

10 Q. If Guy testified, and I can find the page if
11 you want, that he thought the drawings depicted in the
12 410 'Patent were the third generation or so of puck
13 design that you or others came up with, would you say
14 that's an accurate statement or --

15 A. As far as to which generation of design it
16 is?

17 Q. Yes.

18 A. Well, the generation design is in the eyes of
19 the person who is looking at it. We had 10 or 11
20 annotations from start to finish. I would consider each
21 one of them a change in tool, a change in generation, so
22 to speak. There was far for more than three, long
23 before we ever came to this. I don't know how Guy looks
24 at generations. I mean everybody looks at it
25 differently, I suppose.

1 Q. Do you know, John, whether or not the drawing
2 actually depicted in the 410 Patent was the puck that
3 was to be manufactured?

4 A. Yes, it was.

5 Q. The puck that was to be manufactured was
6 going to have three runners or more runners, how many
7 runners?

8 A. I really couldn't tell you how many runners
9 it had. Actually, according to this, it was six
10 runners.

11 Q. It says on Issue No. 2 on this letter, the
12 first page, that you went to Sport Court on the 24th of
13 November.

14 Do you recall that trip?

15 A. Once in November and once in December.

16 Q. Was it the Sport Court facility in Utah?

17 A. Yes, Salt Lake City.

18 Q. Why did you travel to Sport Court?

19 A. The first time is when we raised the issues.
20 As I remember, we were invited to go up there and take a
21 look how they were going to do it to see if it was -- if
22 their quote and there cycle times were actually
23 feasible. And the first time is when we went up there
24 to look at what they were saying was feasible. As I
25 remember the conversation, they had a different system

1 of doing it. It was very possible to do what they said
2 they could do.

3 The second time was to basically answer any
4 questions they had in the manufacturing of the puck.

5 Q. Do you know if Sport Court somehow receives
6 tooling from someone for the puck?

7 A. They received -- they received a set of
8 tooling from us, I think.

9 Q. How about the molds?

10 A. That would be the tooling.

11 Q. Was it a single mold, or was it more than one
12 mold?

13 A. That I believe was a single mold.

14 Q. How was the pin to fit into the puck, can you
15 describe the mechanism?

16 A. As I remember, one side was serrated and one
17 side had a receiving collar that went through. It
18 basically locked together by serration.

19 Q. Who came up with the serrated design on the
20 runner?

21 A. To my recollection, I think Mr. Bellehumeur
22 did.

23 Q. Do you know for a fact who came up with that?

24 MR. DONAHUE: He's already testified.

25 THE WITNESS: No, I don't know for a fact

1 that he came up with it personally.

2 BY MS. FORREST:

3 Q. So, you said that the royalty payments
4 continued through late '94 or early '95. Can you
5 provide me with the amount of royalties you actually
6 received from the puck sales?

7 A. Actually, royalties from the puck sales I
8 think was somewhere around 7 or \$8,000.

9 Q. What is your understanding of why the
10 payments stopped?

11 A. I don't know why the payments stopped. I
12 never could get an answer out of RHI to understand why
13 the payments stopped. They sent invoices and account
14 balances that showed they owed more money.

15 Q. Who do you mean by "they"?

16 A. "They," being the group. RHI up north.

17 Q. In San Francisco?

18 A. I think it was -- wherever Diamond's group
19 was. When we tried to collect which was a monumental
20 task on our side, we never heard from them unless we
21 called -- unless I called. "We" being Mr. Haarlamert
22 and myself.

23 We were either passed off to someone else, or
24 we were passed off to someone who knew nothing about the
25 agreements. They didn't believe the agreements were

1 real. It turned into checking with a particular party
2 who pleaded ignorance to the agreement. They fell off
3 the face of the earth, as did -- there was nobody else
4 to call.

5 Q. Let's go back to your testimony.

6 Who was responsible for drafting the royalty
7 agreement?

8 A. The initial agreement was drafted between Mr.
9 Haarlammert, myself, and Mr. Bellehumeur. That was
10 passed through to the eventual buyers Trop Sport. I
11 don't know if it is Troop Sport or Trop Sport. It got
12 passed through to them and agreed to.

13 Q. Do you have any documentation in the files
14 you brought with you today pertaining to the royalty
15 structure that you were to receive?

16 A. No, I didn't bring that file with me.

17 Q. So, are there more files related to this
18 matter that you have not brought today?

19 A. This is all I kept. There is one other file
20 and that's a listing of the checks and the royalty
21 payments.

22 Q. Was there a reason why you didn't bring that
23 other file today?

24 A. Honestly, based on what I thought this
25 deposition was about which is the patent, I have no

1 sense nor do I still have any sense why royalties are
2 part of the issue, so I didn't bring it.

3 Q. I appreciate that.

4 A. This was an August 12th agreement that we had
5 originally. This was the initial agreement, and I don't
6 think that I have. --

7 Q. I'll attach this as Exhibit 11 to your
8 transcript. It's an August 12, 1992, letter. It's
9 called a Letter of Intent signed by you and Guy
10 Haarlamert as the presenters, I suppose. And then
11 there is a line saying "In Agreement," which was signed
12 by A.R. Bellehumeur and D.A. Murphy.

13 (Defendant's Exhibit 11 marked.)

14 THE WITNESS: Right.

15 BY MS. FORREST:

16 Q. What is your understanding of a reference to
17 WSMI, which I see is World Sports Management
18 Incorporated?

19 What was that entity?

20 A. There was a situation if I remember the -- in
21 September there was a game -- there was a demonstration
22 game between the U.S. and Canada teams in Las Vegas.

23 They were going to -- they weren't going to.

24 "They," being RHI had negotiated with World Sports

25 Management three or four adds over the course because it

1 was on one of the networks. I'd like to say CBS, but I
2 can't remember. They broadcasted the game from Vegas
3 and there was three or four spots where they flashed up
4 the puck and offered the puck on a 1-800 number if
5 somebody wanted to buy a puck, just to generate sales
6 and interest.

7 The agreement was that less the cost of the
8 advertising, we would get 100 percent of that royalty --
9 the money that came in from them. It was a one night
10 event, and I think it was 22 pucks that were sold that
11 night.

12 Q. Did you actually go to the game?

13 A. Yes, I was at the game.

14 Q. How did the puck perform during the games?

15 A. The puck -- you're asking the guy who made
16 it. I think the puck performed better than we had
17 anticipated. It had a little bit of a bouncing effect,
18 as I remember. I think we attributed that mostly to
19 that it was on top of an ice surface. So, the puck
20 probably got a lot colder than we anticipated, so we
21 were swapping out pucks quite a bit with the referee
22 because they were getting cold.

23 Q. What effect did the coldness have on the
24 performance of the puck?

25 A. Just making it harder which probably took

1 away a little bit of the elasticity when it hit the
2 wall. As I remember, the biggest problem was is it was
3 coming off the wall a lot faster and it was rolling and
4 going a lot further than we had anticipated in the
5 original design based on it being cold. There was no
6 give when it hit the wall, so it bounced off the wall
7 pretty good.

8 Q. Did it affect the friction of the runners on
9 the surface?

10 A. No.

11 Q. And by that I mean, did the coldness affect
12 the friction?

13 A. It was on a Sport Court floor. There was no
14 problem with it moving.

15 Q. So, this Letter of Intent, was this the
16 agreement that was ultimately finalized between the
17 parties?

18 A. That was an agreement we had back when we had
19 first got involved -- when we first started setting up
20 royalties for payments on the puck. There was an
21 agreement after that which was put together when it
22 moved from RHI to Trop Sport.

23 Q. When the puck moved from RHI to Trop Sport --

24 A. However that agreement was, right. There was
25 another agreement. That was the five cents,

1 two percent.

2 Q. Do you have a copy of that agreement, by any
3 chance?

4 A. Let me look and see.

5 Q. Are you okay, John, if we go another hour?

6 A. I'm fine.

7 MR. DONAHUE: If we are going to go another
8 hour, why don't we take a break?

9 MS. FORREST: Why don't we finish the
10 questioning here.

11 MR. DONAHUE: If you're going to be another
12 hour, because I have to let my office know.

13 MS. FORREST: Let's just finish this line of
14 questioning.

15 MR. DONAHUE: You don't have an answer to
16 that?

17 MS. FORREST: We're on the record, so please
18 don't say anything.

19 BY MS. FORREST:

20 Q. Has anyone ever called you anal, John?

21 A. Because of this?

22 Q. Because of your records. I mean that in a
23 good way.

24 A. I understand.

25 Only till I come up with what they're looking

1 for. I don't see anything here. This is the overall
2 agreement, but there is nothing here related to us that
3 I see.

4 Q. When you say this was the overall agreement,
5 what are you referring to?

6 A. This was back in January of '93 when roller
7 hockey was working with the licensing agreement which
8 was going to Trop Sport. This was a copy that I had of
9 whatever they sent me the first time based on what the
10 agreements were. Recollection tells me it was a
11 separate agreement we had that was outside the scope of
12 this.

13 Q. Do you know if any assignment was made after
14 Trop Sport?

15 A. No, I don't.

16 Q. Would you mind terribly if I attached a copy
17 of that agreement in your file to your transcript as No.
18 12.

19 (Plaintiff's Exhibit 12 marked.)

20 THE WITNESS: No.

21 BY MS. FORREST:

22 Q. Do you think that accurately sets forth the
23 agreement that was ultimately reached?

24 A. I don't know whether it is or not. It is
25 unsigned.

1 Q. At any rate, it is the five cents per puck,
2 and two and a half percent profit.

3 MR. DONAHUE: Can I see that?

4 MS. FORREST: Let me go another ten minutes
5 and then it will probably be a good time to a break.
6 I'll need another hour with you.

7 BY MS. FORREST:

8 Q. Do you have any idea, John, how much money
9 has been made so far off the sale of the 410 'Patent?

10 A. No, I don't.

11 MR. DONAHUE: If we are going to be another
12 hour, I wouldn't mind taking 15 minutes to get a soft
13 drink or something else.

14 MS. FORREST: Sure.

15 Let's go off the record.

16 (Recess.)

17 MS. FORREST: Back on the record.

18 THE WITNESS: I have a question.

19 MS. FORREST: Okay.

20 THE WITNESS: What I would like to enter into
21 at this point is that it's my understanding that this
22 was related to a patent issue and since Mr. Donahue has
23 told me today that he cannot give me direction one way
24 or the other because he is not my attorney, I'm going to
25 ask you the question.

1 Can you tell me the relevancy of the
2 questioning regarding payments and royalties after the
3 fact when the issue, as I understand, it is patents and
4 who owns the patent?

5 MS. FORREST: I'd be happy to answer that,
6 actually.

7 Relevance is pretty board when we're
8 discovering things about a case. I'm entitled to know
9 everything that might potentially be relevant to the
10 case when things could lead to another, so that's why I
11 am exploring that issue.

12 Another thing is, that I've been told by
13 witnesses that you might have been offered money for
14 your testimony today. So, therefore, the issue of
15 royalties, in my mind, is relevant to see if you have
16 any bias. Other than that, I will continue with the
17 questioning.

18 Does that answer your question?

19 THE WITNESS: It's an answer. Okay.

20 Just as long as we're here, that was the only
21 discussion I had. I asked the question what the
22 relevancy was, and what I did or didn't have to pass on
23 when I thought it was irrelevant. Mr. Donahue told me
24 that he couldn't offer me any --

25 BY MS. FORREST:

1 Q. While we are along that line of questioning,
2 John, we alluded to this earlier. We did have some
3 communications, you and I, several months ago. We were
4 in the process of trying to prepare a declaration for
5 you to sign. I can produce the letters, if you would
6 like, that you and Guy were responsible for inventing
7 the puck.

8 Do you remember that conversation?

9 A. Mm-hmm.

10 Q. Is that yes?

11 A. Yes, I do.

12 Q. I prepared a declaration based on our
13 conversations over the telephone, and I was provided a
14 fax number which I assume is at your home --

15 A. Yes.

16 Q. -- to fax the declaration to. Did you
17 receive that?

18 A. Yes, I did.

19 Q. And no changes or feedback were made to that
20 declaration. Do you recall that?

21 A. I didn't make any changes. I didn't do
22 anything with it.

23 Q. Why did you not do anything with the
24 declaration?

25 A. After looking at it and reviewing it and

1 thinking this through, the same reason I asked the
2 question when we came back here. There was a lot of
3 hinging on after the fact of royalties. Who got paid
4 and who was owed -- questions pertaining to
5 Mr. Bellehumeur's input in paying me, paying us, Mr.
6 Haarlammert and myself royalties.

7 It got to a point that after looking at it, I
8 honestly felt that I didn't believe that a lot of the
9 issues were relevant to what I perceived or heard the
10 case was, which was Mr. Willison's claim that he
11 invented the puck.

12 Q. That's one small portion of it. I'll
13 represent to you that in motions filed in this matter,
14 we're not necessarily claiming that Anno Willison is the
15 inventor of the patent. Rather, it was a conglomeration
16 of various people's efforts, including you, including
17 Guy.

18 Let me just ask you this: Was the issue of
19 potentially invalidating the 410 'Patent an issue in
20 your mind as to whether or not you were going to be
21 signing that declaration?

22 A. No.

23 Like I said, I have a vested interest in the
24 410 'Patent. The reason that I decided not to get
25 involved with the declaration was wholly based on the

1 fact that royalties, who owed me what and how much I had
2 to go through to try to collect it. I didn't believe
3 they were relevant issues to what I perceive the issue
4 was.

5 Q. Because you see it as a privacy issue, and
6 you didn't think you had to disclose those things?

7 A. I saw it as privacy. I don't have anything
8 to hide about it. There is no issues on my end that are
9 detrimental to me. I saw it basically as a no-issue in
10 the scope of what I thought the discussion was going to
11 be about.

12 Q. Were you concerned that you might invalidate
13 the patent that you were named on?

14 A. No.

15 I had no problem. I don't have a problem
16 telling you exactly the way I perceive the last -- those
17 eight months. But what has transpired over the last
18 five or six months, I just don't see a relevancy in it.

19 It has nothing to do with how the puck was
20 developed. It has nothing to do with what we went
21 through in September. It's issues that I had
22 business-wise with those who gained control of the puck,
23 and it was strictly monetary. In my mind, it has
24 nothing to do with 410.

25 410 is not based on any monetary situation.

1 It was after the fact, which is why I asked the question
2 when we came back. If there's relevancy, sobeit, but I
3 just don't see it.

4 Q. I appreciate that. It might not make sense
5 to you, but I have a modus operandi here. I'm entitled
6 to -- my client is being sued by Mr. Bellehumeur, so
7 we're entitled to find out anything and everything that
8 you know. It might not seem pertinent to you, but we're
9 entitled to ask the questions.

10 A. Fair enough.

11 Q. I hope to be done in another hour or so.
12 It's 1:45. Let's see if we can march through these
13 things.

14 We were on a break for 15 minutes. During
15 that time, I had occasion to go through one of the two
16 files that you've produced today. I just have some
17 questions actually pertaining to those.

18 One of the memos that is on Air Frame
19 Manufacturing letterhead is dated July 16th, 1992. It
20 appears as those -- I'll mark this as the exhibit next
21 in order.

22 MR. DONAHUE: No. 13.

23 MS. FORREST: 13.

24 (Defendant's Exhibit 13 marked.)

25 BY MS. FORREST:

1 Q. It appears as though you're trying to
2 finalize the final manufacturing agreement and you
3 propose that in Paragraph 3 on Page 1. "It is agreed
4 that we will be the initial manufacturer of the official
5 Roller Hockey International puck. If at any time, the
6 WSMI, which is World Sports Marketing Incorporated,
7 licensed distributor elects to discontinue our
8 manufacturing relationship, we will immediately exercise
9 a buyout clause payable in full within 30 days for the
10 amount of \$20,000."

11 Was that provision ever incorporated into
12 your final agreement?

13 A. No.

14 Q. Were you ever paid any lump sum after the
15 manufacturing was taken away from Fast Trax and given to
16 Mr. Kotler's company?

17 A. We never received any monies after December,
18 which is when that all happened -- December '92, other
19 than royalties that were agreed to in the agreement.

20 Q. And there's also a July 10, 1992, letter,
21 which I'll mark as Exhibit 14. It's a letter to
22 Mr. Bellehumeur and it's signed by Guy Haarlammert.

23 (Defendant's Exhibit 14 marked.)

24 MS. FORREST: It says, "Air Frame
25 Manufacturing is pleased to submit the following

1 quotation, per your request, for the tooling, research
2 and development of parent material and manufacture of at
3 least six pucks to be used for testing by Roller Hockey
4 International.

5 The basis for the quote is the sketch (copy
6 attached) submitted to Air Frame Manufacturing during
7 the meeting of 8 of July, '92, in your office, along
8 with basic overall dimensions. It should be further
9 noted that Air Frame Manufacturing has been given a roll
10 of electrical tape to be used as a model for determining
11 the proper and rigidity and compression desired by
12 Roller Hockey International. Air Frame Manufacturing
13 has not, for the purpose of this quote, changed, altered
14 or modified the specifications as presented by Roller
15 Hockey International."

16 And attached to this two-page letter is a
17 sketch on RHI letterhead, which I will hand to you.

18 The question is: Is that the sketch that you
19 recall being handed by Mr. Bellehumeur during that
20 meeting with Guy Haarlamert?

21 MR. DONAHUE: On what date?

22 MS. FORREST: As he previously testified when
23 that meeting took place, which I believe you said was
24 sometime in June.

25 THE WITNESS: The drawings I gave you were

1 the drawings in June. This drawing here -- I don't know
2 what this is a drawing of. I would say, obviously, if
3 this was attached to it, because that's where I took the
4 other drawings from, then this must have been
5 something -- this must have been drawn up at the same
6 time. I don't know.

7 Q. During that meeting?

8 A. I would assume so.

9 Q. I don't want you to assume. Do you have any
10 recollection?

11 A. I don't have a recollection, but if it was
12 attached --

13 MR. DONAHUE: Can I see that?

14 MS. FORREST: I'm not quite done with it.

15 BY MS. FORREST:

16 Q. In looking at the drawing, does that refresh
17 your recollection of any design discussion that might
18 have occurred during that meeting?

19 A. It was one of the first attempts at putting a
20 runner in a puck, or it was one of the discussions about
21 the puck. This is the same concept. It's a head -- it
22 has a threaded shaft that went through the puck and
23 there was another threaded piece on the outside. We
24 tried one with a hexagon head on it. That was one of
25 the annotations that we used. If my memory serves me

1 right, this came from the McMaster-Carr catalog. We
2 also tried one with two unique holes and it was a
3 special tool, because we had determined which -- that a
4 regular screw driver-type head was causing -- the slot
5 was causing opportunity to get caught on concrete and
6 also flip it over. This was later on in the initial
7 process where we trying to better define the head.

8 Again, if memory serves we right, we went to
9 a turning shop that I used for my other business in LA.

10 Q. Do you recall the name of that?

11 A. Something Denny. And they even tried to
12 manufacture some heads that didn't have any kind of a
13 slot or hole on top of it. That didn't work real well.
14 I think it was J. Denny.

15 Q. J. Denny?

16 A. I'm almost sure there's an invoice in that
17 package. He was a turning shop in LA down by us.
18 That's what that is. It had a hex head on it, and again
19 it was one of the ones from McMaster-Carr back in the
20 July timeframe, so that drawing probably was part of
21 that letter.

22 Q. You mentioned you got part of the idea for
23 the runner from a McMaster-Carr catalog?

24 A. After we determined we were looking for a
25 runner, we went to McMaster-Carr, which is basically a

1 large industrial hardware supplier. They had numerous
2 different types of fasteners. We purchased a few of
3 everything we could think of that would be able to be
4 screwed together or screwed into the material to
5 determine what the size and shape of the head was,
6 because manufacturing something in a small quantity like
7 that is very expensive.

8 So, we just basically went A through Z
9 through the catalog and bought everything we thought of
10 that could work, including this one with a mallet head
11 on the top. We tried screws. We tried Phillips screws.
12 We tried everything we could do to make it work. That
13 was all during this June-July timeframe when we were
14 trying to solve this major problem of it rolling up on
15 its edge.

16 Q. Do you know of any screws that you purchased
17 were protected by patents?

18 A. They were all available for purchase through
19 McMaster-Carr, so for use on after-market products. My
20 answer is no.

21 Q. Were you ever shown any other patents during
22 the course of developing the 410 puck, so that you could
23 get an idea of various tools or implements to be used in
24 the design of the puck at issue here?

25 A. No.

1 Q. Did you ever discuss any other patented
2 materials during the course of your development of the
3 410 'Patent?

4 A. No.

5 MR. DONAHUE: Can I see that?

6 MS. FORREST: Sure.

7 I want to attach this as Exhibit 14 --

8 MR. DONAHUE: Exhibit 15.

9 MS. FORREST: It's a September 8th, 1992,
10 letter on Air Frame Manufacturing letterhead to
11 Mr. Bellehumeur and it's signed by you.

12 (Defendant's Exhibit 15 marked.)

13 BY MS. FORREST:

14 Q. You're going through offers for two pricing
15 structures for Mr. Bellehumeur's review and
16 consideration. You're going through two different
17 scenarios.

18 "Pricing structure No. 1: Structure #1 is
19 based on the manufacturing of pucks using a single
20 cavity mold. Single cavity mold yields approximately
21 500 parts per day," and you guesstimate the startup
22 cost, including required production molds, is \$15,000.

23 There is a pricing structure No. 2:

24 "Structure #2 is based on the manufacturing of pucks
25 using a four cavity mold. Four cavity mold yields

1 that?

2 (Defendant's Exhibit 16 marked.)

3 THE WITNESS: Mr. Haarlammert's.

4 BY MS. FORREST:

5 Q. What did he mean by "Sport Court should not
6 be in the picture"?

7 A. We were trying to strategize how we were
8 going to go back to RHI and basically sell our proposal.
9 The business sense was to come up with a plan before you
10 go back and meet customers. That is what we're trying
11 to do.

12 Q. Do you know about when this little note was
13 written?

14 A. Well, it had to be after we found out about
15 Sport Court, so it had to be August, September, I would
16 imagine. The front end was mine, and then that is when
17 we started to put the package together.

18 MS. FORREST: I'll mark the front of that
19 document as 16A, and I'll mark the reverse as what you
20 say is Guy Haarlammert's note as 16B, so the record is
21 clear.

22 (Defendant's Exhibit 16A & 16B marked.)

23 BY MS. FORREST:

24 Q. There's another little note in here that is
25 entitled "Administrative Costs," and it ranges from

1 dates to July 8, 1992, through August 21st, 1992.

2 A. Yes.

3 MS. FORREST: I'll mark that as 17.

4 (Defendant's Exhibit 17 marked.)

5 BY MS. FORREST:

6 Q. Have you ever seen that document before?

7 A. Yes.

8 Q. Who prepared that document?

9 A. I did.

10 Q. What does it reflect?

11 A. What we were doing was, we were starting to
12 put together some costs data and just a formulation of
13 what we had been doing because things were getting -- as
14 you can see by the dates, there was a lot of activity.
15 In fact, the accountant recommended since we were doing
16 a lot of back and forth meetings, that we start
17 documenting these things and we look for costs in order
18 to open Fast Trax into a separate entity. We needed to
19 look -- for development costs. We were doing all of
20 this as development costs.

21 Q. Does that document reflect all the meetings
22 you ever had with Mr. Bellehumeur?

23 A. No, it didn't. This reflects more than Mr.
24 Bellehumeur's meetings. If you isolate the meeting with
25 Bellehumeur on this, those were the ones between July

1 and August that we documented, and it doesn't reflect
2 anything before July or after August.

3 Q. So, your accountant merely suggested you
4 begin keeping a log in about July and that's why this
5 document begins in July?

6 A. Right.

7 We started to take this more seriously when
8 we hit July, and we felt we just needed to start keeping
9 track of costs and meetings, what was going on. We were
10 also trying to remember things that happened previously,
11 so a log worked very well for us, so we started
12 developing it.

13 Q. I'm not really sure when this next document
14 begins and ends, but it's an August 26th, 1992, letter
15 from Hartman Enterprises to Fast Trax. It's signed
16 Virgil Hartman and it has attachments to it. I'll mark
17 it as Exhibit 18. Let me show you this document and ask
18 if you ever seen that before?

19 (Defendant's Exhibit 18 marked.)

20 THE WITNESS: This was Mr. Hartman's bid to
21 us for tooling. He manufactured a complete line of
22 racing car parts so he had some people who could do
23 Blister Pack packaging, so he offered to get a price
24 from his people at Blister Pack. That's what all this
25 was.

1 BY MS. FORREST:

2 Q. Do you see where it says on the first page of
3 the letter, "He recommends using six runners versus
4 three"?

5 A. Yes.

6 Q. Was it Mr. Hartman's idea to use six runners
7 as opposed to three runners?

8 A. No.

9 In the molding process we were determining
10 the holes. Actually, it was easier in the molding
11 process to put in six holes to allow the material to
12 flow easier, than trying to get the material to flow
13 through the space between three of them. I'm not sure
14 why this was even a issue in the letter. But based on
15 the fact from getting the liquid plastic to flow around,
16 it was easier if you put six in. Because what we were
17 going to do is, use two of the spuds that he was putting
18 in for the runners. He was going to use those to try to
19 interject some extra material, so we could maybe
20 interject two or three locations instead of one.

21 Q. So, would six holes necessarily mean six
22 runners were going to be used is my question, I guess?

23 A. Yes, six legs. That is what he calls this
24 throughout the whole thing. He called these things
25 legs, which had six legs.

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1 Q. Do you know if there was a Figure 3 that was
2 developed?

3 A. No, I don't. I don't know what Figure 3
4 would be. It was just two pieces. It was the puck and
5 the runners. I don't know what Figure 3 would be or if
6 it even existed. I don't think there was.

7 Q. Thank you very much.

8 No. 19 will be an invoice dated August 21st,
9 1992, with a drawing attached.

10 (Defendant's Exhibit 19 marked.)

11 THE WITNESS: It is a request for quotation
12 from Fast Trax Enterprises to U.S. Fastener Corporation
13 in Irvine to the attention of Paul.

14 Have you ever seen that document before?

15 A. Yes.

16 Q. There's a drawing attached which is a second
17 page. Who made that drawing?

18 A. I did.

19 U.S. Fasteners Corporation completely escapes
20 me. From the drawing, it appears that we had drawn up
21 another method without a head -- I'm sorry. Without a
22 smooth head on it, and U.S. Fasteners must have either
23 been someone who manufactures -- has a shop that
24 manufactures it, or they had something and we sent it to
25 them and asked if they could meet the requirement. I

1 think there is a bill in there from U.S. Fasteners.

2 Q. So, were you at this point in time trying to
3 come up with a suitable runner design without
4 considering the material from which it would be made?

5 A. Absolutely.

6 When were in this point of the process, we
7 basically came up with a lot of pucks that have holes in
8 them that could accept a runner of some kind. We were
9 just throwing out everything we could come up with,
10 because again, the cost to have six or seven of these
11 things manufactured -- to find out they were not good
12 would be in the hundreds of hundreds of dollars.

13 It was much easier to come up with a design
14 like this one where someone may have had something that
15 is close. We put it together. Once we determined how
16 it runs on the surface, we could always come back and
17 then final design it and have it made to print or
18 purchase it from somebody.

19 Q. Did you already have a dedicated design in
20 place as far as the orifice for the runner? We alluded
21 previously to that letter from Mr. Hartman.

22 A. Mm-hmm.

23 Q. Where he suggested six openings as opposed to
24 three. Did you already have a dedicated design, as far
25 as the circumstance of that runner opening in place, and

1 you were simply trying to find a runner with a shaft
2 size that would fit into that opening?

3 A. To the best of my recollection, when we got
4 to Hartman's operation for this quote, we pretty much
5 locked in what we thought the size of the hole to accept
6 the inner-workings of the runner was probably still up
7 in the air, because it could have been adjusted large or
8 smaller in diameter for what would compensate the other
9 side.

10 So to answer your question, I don't think it
11 was cast in concrete. We were close. We had a good
12 idea from what was out there, what size, what we were
13 going to have to end up with.

14 Q. Were there ever times when Mr. Bellehumeur
15 made suggestions that he offered those suggestions in
16 writing for the puck design?

17 A. Yes, I'm sure there were times because we did
18 it both ways where we would scribble something on paper
19 and fax it to each other.

20 Q. Would any of those suggestions be reflected
21 in the two files that you brought with you today?

22 A. No.

23 Q. Why is that?

24 A. Because there's a lot paperwork that just
25 ended up going in the trash. Once we got to a certain

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1 point, there was no reason to keep it.

2 Q. Is there any reason why you chose to maintain
3 design recommendations and changes back and forth
4 between you and say Mr. Hartman?

5 A. Mr. Hartman was in a different situation
6 because when he got involved in it, he was quoting, and
7 whenever you quote some of the manufacturing print, you
8 better make sure you hang on to the print so you know
9 what you're getting at the back end.

10 During our phase of engineering -- you got to
11 remember, this wasn't being engineered like we're going
12 to be engineering a jet engine or something. It was
13 just a matter of we were doing this while trying to run
14 a regular business. We were doing this a lot evenings,
15 a lot of weekends, a lot of days. We would go down
16 there and see Mr. Bellehumeur while we were doing other
17 business in that area.

18 So, at that point, there was really no
19 reason -- it had made no sense to document and revise
20 and date drawings. We were just basically trying to put
21 out a product that we could sell and a product that
22 would work. The only reason we kept any of these is
23 that when you're dealing with subcontractors and he
24 quotes you something, they -- although he was a friend,
25 sometimes they tend to waiver on what they quote or how

1 many or whatever it is, so it just made good sense for
2 these guys to keep the drawings.

3 Q. The last exhibit in this file folder which I
4 will describe for the record, it's a red or brown folder
5 and it has a little sticker on it that says, "Original
6 Agreement (Fast and RHI) Manufacturing Quotes, Karhu
7 Licence and Distribution Agreement."

8 So, the final exhibit from that folder is a
9 October 12th, 1992, letter to you from Paul Chapey. I'm
10 not sure if this drawing on grid paper is supposed to be
11 attached to it, but it says, "Dear John, thanks for
12 dropping off the pucks. The plastic runners makes a big
13 difference in weight. The steel runner pucks I have
14 weigh 4.75 ounces and the plastic just slightly over
15 3.5. I think 3.25 is optimal. I've always thought this
16 is the ideal weight and I still do. I tested the
17 plastic on smooth asphalt, the type of surface players
18 would seek out for pickup games. Here are my
19 observations. When I refer to the tape, I am referring
20 to the sample I made with the plastic pins that I sent
21 to you. The plastic puck performed much better than the
22 steel. However, the tape with pins performed much
23 better than the plastic puck. It slide better, it
24 shoots better and stick handles smoother. I suggest
25 that you reduce the weight and the height from the

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1 bottom of the plastic runners to the top of the puck on
2 the other side (runner to top of puck, not runner to
3 runner) to 7/8". I'm not sure that the rounded runner
4 is best. I would suggest trying a flat runner.

5 I think that the flat runner should be closer
6 to the puck and not rise as high. The runners on the
7 tape rise about 1/32". I think this helps to keep the
8 puck down and doesn't allow a stick to get under the
9 puck. Try to obtain a plastic that slides better than
10 what is now being used. I think the plastic puck will
11 work very well indoors and might be preferred over the
12 steel one. I'll try it tonight in San Diego. Please
13 fax a copy of this to Alex."

14 MS. FORREST: Mark that as Exhibit 20.

15 (Defendant's Exhibit 20 marked.)

16 BY MS. FORREST:

17 Q. Let me show that letter to you. Do you
18 recall seeing that letter?

19 A. Mm-hmm.

20 Q. Would you like to change your testimony where
21 I believe you testified earlier that Paul Chapey didn't
22 really make suggested changes to the design of the puck?

23 A. That's not what I said. What I said was that
24 Mr. Chapey like everybody else offered an opinion. And
25 the plastic tape -- there was a group who thought

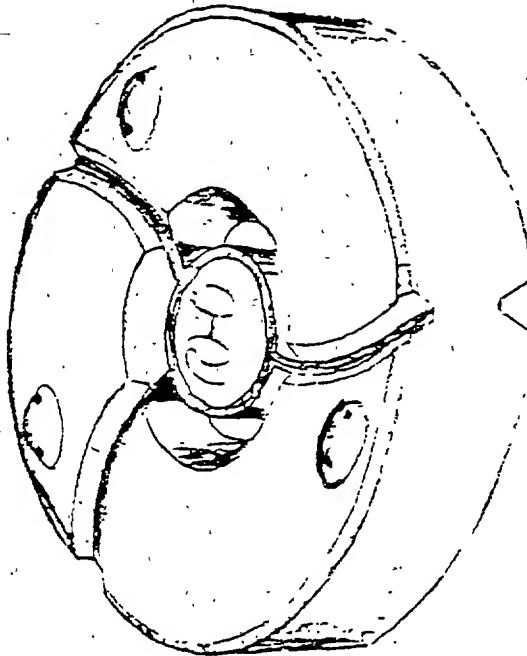
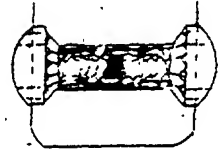
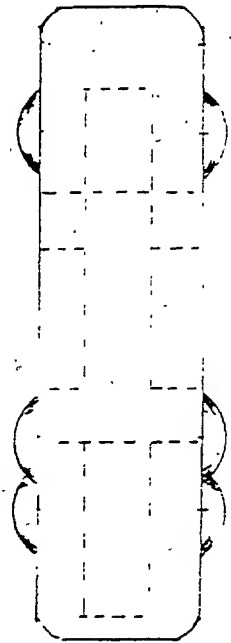
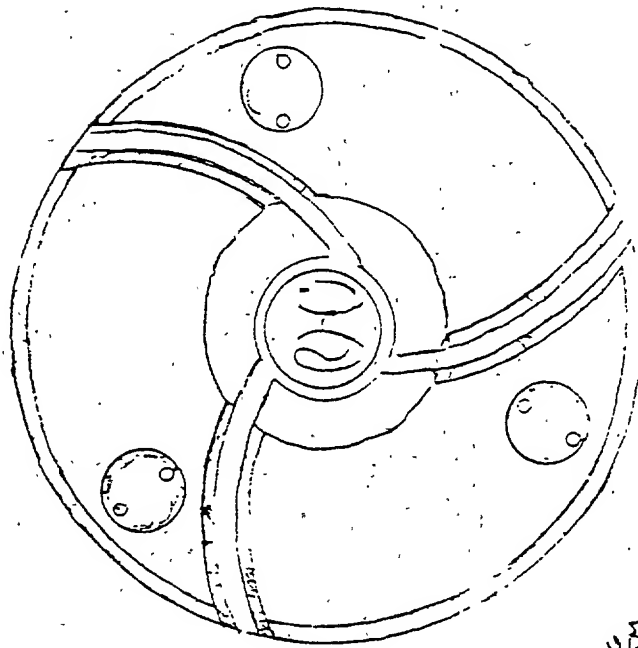
1 plastic tape was the ultimate as far the diameter and
2 the thickness and the weight. It was the initial
3 concept with the black tape. We had sent this to
4 Mr. Chapey. Like I said previously, he like a lot of
5 other people offered recommendations. In here he is
6 talking about the height of the runner versus the body
7 of the puck so the stick didn't get underneath it and
8 roll it. These were written -- we got a lot of
9 recommendations. Whether this entered into the final
10 design -- we took this into consideration as much as
11 everything else. I don't think -- I almost sure that I
12 didn't say that he didn't give us recommendations.

13 What I said was, that he wasn't instrumental
14 in the designing of this thing. We never sat down and
15 went through design criteria with Mr. Chapey. We
16 offered it to him. Mr. Bellehumeur saw him as a good
17 source for -- as far as my recollection of the
18 conversation with Mr. Chapey and Mr. Bellehumeur, he was
19 a very good source for information for testing, because
20 he had a league down there. He was very well versed in
21 hockey. He knew the performance that you should and
22 shouldn't get out of the puck. He made his
23 recommendations along with everybody else. The drawing
24 is -- this is our drawing. This isn't Mr. Chapey's
25 drawing. Why it was attached to the back of that --

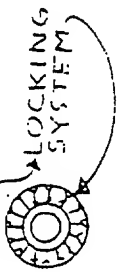
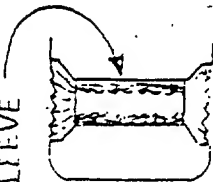
J. Nehmens

EXHIBIT NO. 4A

4-22-02
E. GONZALES, DSR



STATIONARY SLIEVE



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CENTRAL DISTRICT OF CALIF.
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(619) 238-8550

Bruce E. Sulzner, S.B. #72859
Emma L. Forrest, S.B. #206985
Attorney for Defendant TSUNAMI HOCKEY

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ALEX BELLEHUMEUR
Plaintiff,
TSUNAMI HOCKEY, LLC
Defendant

CASE NO. CV-01-00890 RSWL (BQRx)
DECLARATION OF LARRY KING IN
SUPPORT OF REPLY TO PLAINTIFF'S
OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT BY TSUNAMI
HOCKEY, LLC
by fax
Motion Date: March 11, 2002
Time: 9:00 a.m.
Judge: Hon. Ronald S.W. Lew
Ctvm: 21
Magistrate: Hon. Brian Q. Robbins

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CENTRAL DISTRICT OF CALIF.
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I, LARRY KING, declare and state as follows:

1. I am one of the four original founders of Roller Hockey International.

Dennis Murphy, Ralph Backstrom, Alex Bellehumeur and I were the original founders of the Partnership known as Roller Hockey International and the corporation which succeeded the partnership.

2. I have read the declarations of Alex Bellehumeur and Dennis Murphy submitted in support of Bellehumeur's opposition to defendant's motion for summary judgment. I do not believe Alex Bellehumeur is the actual inventor of the roller hockey puck that is depicted in the 410 PATENT, nor ever had the right to file for any puck patents in his own name.

3. I agree with Mr. Murphy's declaration that Bellehumeur was assigned the responsibility of developing and selecting the uniforms and the puck. Dennis Murphy was the master organizer and he was responsible for organizing the league for the PARTNERSHIP. Ralph Backstrom was the resident hockey expert player and he was assigned the duties of developing the playing rules and recruiting the players. I was assigned the duties of developing the compensation scheme for RHI along the lines of the compensation formula I had developed for TEAM TENNIS, INC. in the early 1980's.

4. Mr. Murphy had the original inspiration for developing professional roller hockey when he saw kids playing roller hockey in the street with a ball for a puck. At the time, Murphy and I were collaborating on trying to start World Team Tennis on an international basis. We abandoned that endeavor because Billie Jean King, my former wife, and the managing partner in World Team Tennis at the time, would not cooperate with us.

5. Dennis Murphy who participated in the development of the American Basketball Association that lost the exclusive marketing rights to the multi-colored basketball it used in launching the league was adamant the same thing would not happen in roller hockey with the puck.

6. Contrary to Mr. Bellehumeur's declaration, we never considered abandoning the formation of the league because of the lack of a suitable puck. Roller hockey at the time was played with a ball, a simple plastic puck or in some cases with a roll of 3M tape. Because of Mr. Murphy's experience in organizing the World Hockey League, he wanted

the professional game to be as nearly like professional ice hockey as possible, so he was against the use of the ball.

7. Ralph Backstrom, as a 5-time Stanley Cup Champion, was one of the inventors of the modern in-line skate that he developed for training in Southern California. He was intimately involved in the testing and development of the RHI puck. Alex Bellehumeur when I meant him at the beginning of Roller Hockey International was a retired building contractor. I doubt if he knew which end of a hockey stick to hold. Dennis and I agreed upon Bellehumeur being in charge of the uniforms and puck because he was a sharp dresser and it would keep him out of our hair.

8. Several people contributed key ideas to the development of the puck that Bellehumeur supervised on behalf of the partnership. Anno Williston, an RHI employee was intimately involved in the process since he was working with both Backstrom and Bellehumeur. I was told during the development that Matt Doven came up with the idea of the air holes in the puck, likening it to a wheel without a tire, which he saw at an auto parts store. Guy Haurilammert, Murphy's son-in-law who owned a tool and die shop with John Nehmens, was responsible for a number of innovations as they designed the tooling for the development of the prototype puck.

9. Murphy, Backstrom and I were astounded to find out after the fact, that Bellehumeur had submitted a patent application for the RHI puck in his own name. Bellehumeur had no right to appropriate a partnership asset to his own use. When confronted with this obvious violation of fiduciary responsibility, he agreed in writing to add Murphy and my names to the patent, but he never did. Murphy and I insisted he add our names to protect the partnership interest in the puck. After Murphy's experience with losing the rights to the ABA Basketball, he didn't want to have a repeat of the experience with hockey.

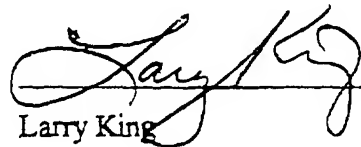
10. As to Alex Bellehumeur's assertion in his declaration why RHI was not included in the ownership of the international patent applications that it was a mistake from two different law firms taking part in the patent applications, I find totally disingenuous. Bellehumeur is a lawyer's worse nightmare. He mired himself in every detail of "his" puck. If you asked the attorneys involved, I'm sure Bellehumeur called them 5 times a day when the patent applications were being drafted and he went over each application

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personally with great attention to detail. I worked with Bellehumeur on drafting the first puck license agreement for RHI, and I dreaded those calls. If RHI was not included in the patent application initially, when it was definite work product of the partnership, it was not included in the applications when it owned the patent by the design of the person managing the puck--Alex Bellehumeur.

11. Murphy states in his declaration "In fact, it was Mr. Bellehumeur who personally funded and raised all of the monies needed to design and manufacture what is now the 410 patented hockey puck." This is not true. Besides the partnership employees time, effort and ideas which were incorporated in the design, I know that Bellehumeur's justification for paying Nehmans, Haarlmaart and one other person for their development work, was because Nehman and Haarlmaart had advanced the cost of the tooling and die development and needed to get that money back. Murphy was outraged at the time that his son-in-law was carrying the league in the cost of the development of the puck.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 28th day of February 2002 at Hanalei, Hawaii.


Larry King

2002 FEB 28 11:00 AM

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Bruce E. Sulzner, S.B. #72859
Emma L. Forrest, S.B. #206985
Attorney for Defendant TSUNAMI HOCKEY

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ALEX BELLEHUMEUR

Plaintiff,

TSUNAMI HOCKEY, LLC

Defendant

CASE NO. CV-01-00890 RSWL (BQRx)

DECLARATION OF STEVEN M. PONA
IN SUPPORT OF REPLY TO
PLAINTIFF'S OPPOSITION TO MOTION
FOR SUMMARY JUDGMENT BY
TSUNAMI HOCKEY, LLC

Motion Date: March 11, 2002
Time: 9:00 a.m.
Judge: Hon. Ronald S W. Lew
Ctrm: 21
Magistrate: Hon. Brian Q. Robbins

I, STEVEN M. PONA, declare and state as follows:

1. I was employed by Roller Hockey International from approximately February 1993 through late 1995, at its office located at 5182 Katella Avenue, Suite 106, Los Alamitos, California. I first worked in a secretarial-like function in the office and I was immediately promoted. Then, after Alex Bellehumeur discovered that I also play roller hockey, he transferred the testing of the roller hockey pucks in-house and he recruited me to test prototype pucks that were being manufactured. I, along with the other "puck testers" relayed our opinions about each puck we tried. During my tenure at RHI, I literally tested every puck improvement that was developed until I left RHI in the Spring of 1995.

2. In addition to testing the puck, I was the director of the licensing department, I helped

1 with RHI franchise development, and I was the director of the equipment supplier pool. Since I
2 worked "inside" the RHI offices, I was privy to a lot of the behind-the-scene discussions between
3 the original RHI founders, namely, Larry King, Dennis Murphy, and Alex Bellehumeur. I worked
4 very closely with these three individuals.

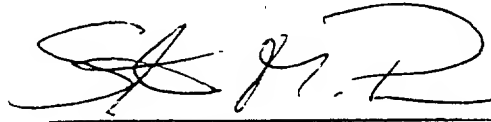
5 3. As far as Paul Chahey is concerned, he was the coach of the Koho Hosers, based out
6 of San Diego, California. In the early 1990s, Paul Chahey was a huge figure in roller hockey.
7 RHI turned to Paul to guide early phases of puck testing. According to my understanding, Paul
8 leveraged his strong position in the industry to influence the growth of RHI's product by
9 designating it as the official puck of NARCH, the North American Roller Hockey Championships.
10 Paul influenced other tournament promoters to make RHI's puck their official puck, as well. If,
11 in turn, the puck was the "official" puck, then all of the amateur league players would want to buy
12 the puck to practice with it. In exchange for his assistance, Paul Chahey received 10% of the
13 Gross Profit, as well as 5% of the Gross Profit for research and development of the puck, which
14 is indicated on the RHI document attached hereto as **Exhibit A**. Alex Bellehumeur directed me
15 to occasionally prepare these Distribution of Puck Proceed forms. As far as I know, RHI paid Paul
16 these royalties.

17 4. From my intimate knowledge of RHI, I can state, with certainty, that Alex
18 Bellehumeur does not have an engineering or manufacturing background. Rather, I believe that
19 he was an art major in college and he later owned and operated Statewide Developers, located in
20 Los Alamitos, California. I recall that he owned a horse stable, as well. Finally, I recall that
21 Alex Bellehumeur was a former city council member from Long Beach and he was a Commissioner
22 with the Long Beach Port Authority.

23 5. Based on my intimate knowledge of RHI, I can state, with certainty, that Alex
24 Bellehumeur guided the direction of the development of the product later named the Jofa RHI
25 Speed Puck on behalf of the RHI founders (Bellehumeur, Murphy and King) and the RHI team
26 members. The hockey puck was literally developed out of necessity by RHI and RHI committed
27 a portion of its revenues to puck development.

1 6. I distinctly remember many "arguments" in the office, where Larry King and Dennis
2 Murphy would question why Alex Bellehumeur unilaterally placed his name on the '410 patent
3 application. There were also many ancillary issues facing RHI that were never resolved due to the
4 '410 patent disagreement. Based on my observations, it appeared that Larry King and Dennis
5 Murphy became so frustrated that they eventually acquiesced to Bellehumeur. The real focus of
6 King and Murphy was on making RHI successful as a whole.

7 I declare under penalty of perjury under the laws of the United States that the foregoing is
8 true and correct and was executed by me on this 28 day of February 2002, at St. Louis,
9 Missouri.

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12 STEVEN M. PONA
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EXHIBIT "A"

02/13/2002 22:01:12

DISTRIBUTION OF PUCK PROCEEDS

DATE: OCTOBER 18, 1994

BASED ON 19,238 PUCKS AND ZERO SETS OF RUNNERS

RHI INVOICE # 1010

DISTRIBUTION OF FUNDS

Cash Receipts:

Funds received from Karhu

Funds from other sources

Total Funds Received

AmountAmount

43,093.12

43,093.12

43,093.12

Cash Disbursements:

Puck Mfg. Cost, Shipping & Inventor's fee

Runner Mfg. Cost, Shipping & Inventor's fee

Puck and Runner Mold Modifications

Air Frame - @ \$0.10 each

\$0.05 to John Nehmens

\$0.05 to Guy Haarlammet

Reserve for Legal, Insurance,

and Accounting @ \$0.30 per puck

\$0.30

R&D @ \$0.10 per puck

Other

RHI (3% of Wholesale)

Wholesale = \$4.85/puck

Wholesale = \$0.70/runner

Total of Above-Listed Disbursements

22,822.88

0.00

0.00

X 19,238 961.90

X 19,238 961.90

X 19,238 5,771.40

X 19,238 1,923.80

2,799.13

35,341.01

35,341.01

7,752.11

7,752.11

Sub Total (Gross Profit)

Air Frame (5% of Gross Profit)

2.5% to John Nehmens

2.5% to Guy Haarlammet

P. Chapey (10% of Gross Profit)

P. Chapey (5% Gross Profit for R&D)

193.80

193.80

775.21

987.61

6,201.69

Excess Funds

Total Distribution to Team Owners and Founders (80%-20%)

3% of Wholesale

Excess Funds

2,799.13

6,201.69

9,000.82